

**#1**

**In The Matter Of:**

**FRANK FISCHER**

**v.**

**SYSKO FOOD SERVICES OF CENTRAL ALABAMA, INC., ET  
AL.**

**NO. 2:05-CV-00763**

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**FRANK FISCHER**  
**November 21, 2006**

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**THE HIGHEST QUALITY IN COURT REPORTING**

FRANK FISCHER  
SYSCO FOOD SERVICES OF CENTRAL ALABAMA, INC., ET AL.

FRANK FISCHER  
November 21, 2006

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IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

CIVIL ACTION NO. 2:05-CV-00763

FRANK FISCHER, an individual,  
Plaintiff,  
vs.  
SYSCO FOOD SERVICES OF  
CENTRAL ALABAMA, INC., et al.,  
Defendants.

IN THE CIRCUIT COURT OF  
MONTGOMERY COUNTY, ALABAMA

CIVIL ACTION NO.: CV-2005-1630

FRANK FISCHER, an individual,  
Plaintiff,  
vs.  
SYSCO FOOD SERVICES OF  
CENTRAL ALABAMA, INC., et al.,  
Defendants.

DEPOSITION  
OF  
FRANK FISCHER  
November 21, 2006

REPORTED BY: Teresa Turquitt Davis  
Certified Court Reporter,  
Registered Professional  
Reporter and Notary Public

1 APPEARANCES

2

3 FOR THE PLAINTIFF:

4 Mr. Davis Middlemas

5 Attorney at Law

6 1740 Oxmoor Road

7 Suite 210

8 Birmingham, Alabama 35209

9

10 FOR THE DEFENDANT, SYSCO FOOD SERVICES OF

11 CENTRAL ALABAMA, INC.:

12 Mr. Arnold W. Umbach, III

13 Attorney at Law

14 Starnes & Atchison, LLP

15 7th Floor, 100 Brookwood Place

16 Birmingham, Alabama 35209

17 -and-

18 Mr. T. J. Segrest

19 Attorney at Law

20 Carr Allison

21 100 Vestavia Parkway, St. 200

22 Birmingham, Alabama 35216

23

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Page 4

1 STIPULATION

2 IT IS STIPULATED AND AGREED,

3 by and between the parties, through their

4 respective counsel, that the deposition of

5 FRANK FISCHER may be taken before Teresa

6 Turquitt Davis, Commissioner, Certified

7 Court Reporter, Registered Professional

8 Reporter and Notary Public;

9 That the signature to and

10 reading of the deposition by the witness

11 is waived, the deposition to have the same

12 force and effect as if full compliance had

13 been had with all laws and rules of Court

14 relating to the taking of depositions;

15 That it shall not be necessary

16 for any objections to be made by counsel

17 to any questions, except as to form or

18 leading questions, and that counsel for

19 the parties may make objections and assign

20 grounds at the time of trial, or at the

21 time said deposition is offered in

22 evidence, or prior thereto.

23

1 APPEARANCES (CONTINUING)

2

3 OTHERS PRESENT:

4 Lynda Wheat

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1 A. You have to speak up a little  
2 bit, please.  
3 Q. I'm sorry. Can you state your  
4 full name, please, sir?  
5 A. Frank Ervin Fischer.  
6 Q. Is that E-R-V-I-N?  
7 A. E-R-V-I-N.  
8 Q. Mr. Fischer, my name is T. J.  
9 Segrest and I'm here to take your  
10 deposition in your worker's compensation  
11 lawsuit.  
12 Mr. Umbach is going to ask you  
13 some questions about your other claims.  
14 Let me ask you first, have you  
15 given a deposition before?  
16 A. Is that one considered a  
17 deposition when I was over at the other  
18 place?  
19 MR. MIDDLEMAS: Let's go off  
20 the record for just a second.  
21 (Off-the-record discussion.)  
22 Q. (BY MR. SEGREST:) Have you  
23 ever been involved in a lawsuit besides

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1 I, Teresa Turquitt Davis, a  
2 Certified Court Reporter and Registered  
3 Professional Reporter of Birmingham,  
4 Alabama, and a Notary Public for the State  
5 of Alabama at Large, acting as  
6 Commissioner, certify that on this date,  
7 as provided by the Federal Rules of Civil  
8 Procedure of the United States District  
9 Court, and the foregoing stipulation of  
10 counsel, there came before me at 184  
11 Commerce Street, Montgomery, Alabama, on  
12 November 21, 2006, commencing at 9:00  
13 a.m., FRANK FISCHER, witness in the above  
14 cause, for oral examination, whereupon the  
15 following proceedings were had:  
16  
17 FRANK FISCHER,  
18 being first duly sworn, was examined and  
19 testified as follows:  
20  
21 EXAMINATION BY MR. SEGREST:  
22 Q. State your full name for the  
23 record, please, sir.

1 this one we are here about today?  
2 A. No.  
3 Q. What I'm going to do is ask  
4 you a series of questions about your  
5 background, about the accident that you  
6 claim today. And what I need for you to  
7 do is to answer to the best of your  
8 ability. I do need you to answer out  
9 loud. It's very hard for her to take nods  
10 of the head, hand gestures, that type of  
11 thing.  
12 A. Okay.  
13 Q. Also, yes and no is a much  
14 better answer for her than uh-huh or  
15 uh-uh. It's something I forget easily as  
16 well, but it's much easier for her to take  
17 that down as well.  
18 A. Okay.  
19 Q. If I start talking too softly  
20 or asking a question that confuses you,  
21 please let me know and I'll be happy to  
22 rephrase my question or ask it again  
23 louder.

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1 If you need to take a break at  
2 any time, you are certainly welcome to do  
3 that. Just let us know if you need to do  
4 that.  
5 Let me ask you also, are you on  
6 any medications today, or is there any  
7 other reason that you would not be able to  
8 give a deposition and understand and  
9 answer my questions fully?  
10 A. There shouldn't be any.  
11 Q. What is your Social Security?  
12 A. 394-60-0920.  
13 Q. And what is your date of  
14 birth?  
15 A. December 24th, 1953.  
16 Q. And do you have a valid  
17 commercial driver's license currently?  
18 A. Right now, yes.  
19 Q. Is that issued in the state of  
20 Florida?  
21 A. Yes.  
22 Q. What is the number of that  
23 driver's license?

1 Q. Are you renting that house?  
2 A. No.  
3 Q. Who owns that house?  
4 A. Tonya Martinez.  
5 Q. What is your relationship to  
6 Ms. Martinez?  
7 A. She's my fiancée.  
8 Q. And I'm assuming she lives  
9 there with you?  
10 A. I'm sorry?  
11 Q. I'm assuming she lives there  
12 with you?  
13 A. Yeah.  
14 Q. Anybody else live there with  
15 you?  
16 A. No.  
17 Q. Have you ever been married?  
18 A. No.  
19 Q. This will be your first?  
20 A. Yeah.  
21 Q. Okay. Do you have any  
22 children?  
23 A. No.

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1 A. (Reviewing document.)  
2 F260265534640.  
3 Q. Has that license ever been  
4 suspended or revoked for any reason?  
5 A. No.  
6 Q. What is your current address?  
7 A. You want the mailing address  
8 or the house?  
9 Q. Go ahead and give me physical  
10 address first, the house.  
11 A. The house is 1227 Evritt  
12 Avenue.  
13 Q. E-V-R?  
14 A. E-V-R-I-T-T. P. O. Box 36023,  
15 Panama City, Florida.  
16 Q. Is it a house at that address  
17 that you live in?  
18 A. I'm sorry?  
19 Q. Is it a house at that address  
20 or an apartment?  
21 A. It's a house.  
22 Q. Do you own that house?  
23 A. No.

1 Q. Where were you born?  
2 A. I'm sorry?  
3 Q. Where were you born?  
4 A. Where was I born?  
5 Q. Yes.  
6 A. Appleton, Wisconsin.  
7 Q. How far did you go in school?  
8 Did you finish high school?  
9 A. Yes.  
10 Q. Where did you go to high  
11 school?  
12 A. Kimberly Senior High.  
13 Q. Is that in Appleton?  
14 A. No. That is Kimberly,  
15 Wisconsin.  
16 Q. What year did you graduate  
17 high school?  
18 A. 1972.  
19 Q. After high school, have you  
20 done any further school such as college,  
21 vocational school and that type of thing?  
22 A. No college. But I did take a  
23 course when they legalized doubles, double

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1 trailer driving, I took a course at the  
2 Fox Valley Technical Institute for  
3 driving.  
4 Q. Where is Fox Valley?  
5 A. I'm sorry?  
6 Q. Where is the Fox Valley  
7 Technical Institute?  
8 A. It's in Appleton.  
9 Q. And do you know about what  
10 year you took that course?  
11 A. No, I don't know what year  
12 that was.  
13 Q. How long a program was that?  
14 A. How long ago was it?  
15 Q. How long did it take you to  
16 finish that course?  
17 A. Oh, I think it was either one  
18 or two months or something like that.  
19 Q. And you completed that course?  
20 A. Yes.  
21 Q. Did you receive a certificate  
22 of completion?  
23 A. If I did, I don't know where

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1 it is or -- I don't remember. It's been  
2 quite a while ago.  
3 Q. Have you ever done any  
4 military service?  
5 A. No.  
6 Q. And after high school -- let  
7 me ask you this: Did you work during high  
8 school at all?  
9 A. Did I work during high school?  
10 Q. Yes.  
11 A. I had a small job delivering  
12 pizzas while I was in senior high school.  
13 Q. Okay. After high school, what  
14 did you do? Did you take a job somewhere?  
15 A. After high school, I went -- I  
16 built silos, cement silos. And I can't  
17 remember what the company's name was. And  
18 then I would just work for the local  
19 farmers in the area bailing hay and doing  
20 whatever had to be done, make some money.  
21 Q. Is this in Wisconsin?  
22 A. Yes.  
23 Q. You say you built silos, and

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1 you can't remember the company's name?  
2 A. No, I don't remember the  
3 company's name.  
4 Q. How long did you work that  
5 job?  
6 A. Not very long because I was  
7 afraid of heights.  
8 Q. You just did that for one  
9 company?  
10 A. Yeah.  
11 Q. Any injuries working that job?  
12 A. I'm sorry?  
13 Q. Did you ever injure yourself  
14 working that job?  
15 A. No.  
16 Q. Would you say you worked there  
17 less than a year?  
18 A. Oh, yes, yeah.  
19 Q. Less than a month?  
20 A. Probably be half a year at the  
21 most.  
22 Q. Okay. And after that, did I  
23 understand you to say you did some just

Page 16

1 odd jobs for local farmers?  
2 A. Farmers. And then after that,  
3 I worked as a security guard. And I don't  
4 know the company's name for that. And  
5 after the security guard, I worked for  
6 Holiday Inn.  
7 Q. Was the security guard job in  
8 Wisconsin?  
9 A. Yes.  
10 Q. What town in Wisconsin?  
11 A. Wherever they put you.  
12 Q. Where were you living at the  
13 time you were working as a security guard?  
14 A. I was living in -- I believe  
15 it was -- I don't know. It could be  
16 Kimberly or it could be Appleton. I'm not  
17 sure.  
18 Q. Are they in the same basic  
19 area, Kimberly?  
20 A. Yeah.  
21 Q. Okay. And how long did you  
22 work as a security guard?  
23 A. I think it was about

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1 two years.  
2 Q. And that was all for one  
3 company?  
4 A. Yes.  
5 Q. You don't remember their name?  
6 A. No.  
7 Q. Were you just guarding  
8 commercial buildings? What were your  
9 duties?  
10 A. It was like a warehouse and  
11 you had to go make your rounds and take a  
12 key and punch a clock, a big round clock  
13 that we stuck a key in it and turned it.  
14 Q. Can you give me an idea about  
15 what year this was, or what years you were  
16 working there?  
17 A. I don't know.  
18 Q. '70s or '80s?  
19 A. '70s.  
20 Q. Any injuries working that job?  
21 A. I'm sorry?  
22 Q. Did you have any injuries  
23 there?

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1 A. No.  
2 Q. And did you quit that job or  
3 were you let go?  
4 A. I quit it.  
5 Q. Any particular reason?  
6 A. I went and worked for Holiday  
7 Inn.  
8 Q. Take a better job?  
9 A. Yes.  
10 Q. And where was the Holiday Inn  
11 you worked at?  
12 A. Neenah, Wisconsin.  
13 Q. Is that N-I-N-A?  
14 A. N-E-E-N-A-H.  
15 Q. What did you do there?  
16 A. Night maintenance.  
17 Q. How long did you work that  
18 job?  
19 A. I don't remember. I'm  
20 thinking maybe somewhere less than  
21 five years, but I'm not sure.  
22 Q. And your duties would be just  
23 general maintenance?

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1 A. Cleaning the place up at  
2 night, the kitchen, the dining room area  
3 and the bar.  
4 Q. Were you ever injured working  
5 that job?  
6 A. No.  
7 Q. Did you resign that job or  
8 were you let go?  
9 A. They sold the place, so I just  
10 left.  
11 Q. Where did you go to work next?  
12 A. I think I was unemployed for a  
13 couple of years, and then I worked for  
14 Sysco.  
15 Q. What year were you originally  
16 hired at Sysco?  
17 A. Was it '77?  
18 Q. 1977?  
19 A. I think it was in '77.  
20 Q. Since you started working for  
21 Sysco, have you ever had any other jobs  
22 with anybody else?  
23 A. No.

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1 Q. And where were you initially  
2 hired with Sysco, what location?  
3 A. In Appleton, Wisconsin.  
4 Q. And what were you hired to do  
5 there?  
6 A. At first, I was the delivery  
7 helper. And six months later, they put me  
8 on shuttle.  
9 Q. What would you do as a  
10 delivery helper? What were your job  
11 duties?  
12 A. We delivered the food.  
13 Q. So you would ride with a  
14 driver and assist them in delivering?  
15 A. In delivering food, yes.  
16 Q. And then you were transferred  
17 to the shuttle driver position?  
18 A. Right.  
19 Q. Is that the position you have  
20 held ever since that time?  
21 A. Since that time.  
22 Q. What were you making when you  
23 were hired on initially at Sysco as a



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1 delivery helper?  
2 A. At the beginning?  
3 Q. Yeah.  
4 A. I don't remember.  
5 Q. Have you ever filed for  
6 unemployment benefits?  
7 A. No.  
8 Q. Have you filed for Social  
9 Security disability benefits?  
10 A. Yes.  
11 Q. When did you make that filing?  
12 A. Right after the accident. I  
13 believe it was right after the accident.  
14 Q. Did you file for those in  
15 Florida or in Alabama? Where did you make  
16 that filing?  
17 A. Social Security?  
18 Q. Yeah.  
19 A. In Florida.  
20 Q. And do you have an attorney  
21 representing you on that?  
22 A. No, I have it. I'm receiving  
23 it.

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1 Q. You have been awarded those  
2 benefits?  
3 A. Yes.  
4 Q. How much do you receive in  
5 Social Security disability benefits?  
6 A. Just a little over 1,500.  
7 Q. Per month?  
8 A. Per month.  
9 Q. Have you ever filed for  
10 bankruptcy?  
11 A. No.  
12 Q. Are you currently on Medicare  
13 at this time?  
14 A. Medicare starts on the 1st of  
15 December.  
16 Q. Do you already have your card  
17 for that?  
18 A. Yes.  
19 Q. At any time in your life, have  
20 you ever received medical treatment paid  
21 for by Medicaid, any state Medicaid?  
22 A. No.  
23 Q. What was your pay when you

1 were initially transferred to the shuttle  
2 driver position, do you remember?  
3 A. The beginning?  
4 Q. Yeah.  
5 A. I don't remember none of the  
6 pay back then.  
7 Q. Describe for me what the  
8 duties of a shuttle driver are.  
9 A. You take the empty trailer,  
10 take it to the warehouse, drop that. If  
11 you have any returns, you take them into  
12 the warehouse. Then they assign you a  
13 trailer to go back to where your position  
14 is, and you take that trailer and drive it  
15 back home.  
16 Q. So you are shuttling between  
17 two different warehouses?  
18 A. Right.  
19 Q. And as a shuttle driver, did  
20 you have one tractor that you always drove  
21 that was assigned to you?  
22 A. Most of the time, I would say.  
23 And then as the company grew, you had to

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1 have more drivers so sometimes you would  
2 have to switch trucks. The same truck  
3 wasn't always the same.  
4 Q. But generally, on a day-to-day  
5 basis, you would be driving the same  
6 tractor?  
7 A. Right.  
8 Q. When you started as a shuttle  
9 driver, were you there at the Appleton,  
10 Wisconsin location?  
11 A. Yes.  
12 Q. And how long did you continue  
13 working at that location?  
14 A. I think it was almost twenty  
15 years, if not that much.  
16 Q. And at some point, you were  
17 transferred to the Panama City location?  
18 A. Yeah. I came down to Florida,  
19 liked it, found out Sysco was down there  
20 and put in for a transfer.  
21 Q. Do you recall what year that  
22 was?  
23 A. '95.



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1 Q. And you were transferred to  
2 that location as a shuttle driver?  
3 A. In Panama City, yes.  
4 Q. While working at the Appleton,  
5 Wisconsin location, did you ever have any  
6 on-the-job injuries there?  
7 A. No.  
8 Q. Prior to the injury that we  
9 are here about today, did you ever have  
10 any previous injuries at the Panama City  
11 location?  
12 A. No.  
13 Q. Who was your supervisor at the  
14 Appleton location?  
15 A. Jim Coon.  
16 Q. How do you spell his last  
17 name?  
18 A. C-O-O-N.  
19 Q. Was he your supervisor for the  
20 entire twenty years that you worked there?  
21 A. Just a foreman. I don't know  
22 how much --  
23 Q. He was the foreman?

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1 A. I believe it was what they  
2 would call the foreman, yes.  
3 Q. Was he your supervisor at the  
4 time that you left Appleton?  
5 A. Yes.  
6 Q. At that time immediately  
7 before leaving there, did you have any  
8 other supervisor you reported to besides  
9 him?  
10 A. No, I don't believe so. I  
11 don't remember any.  
12 Q. When you transferred to  
13 Florida, who was your supervisor at that  
14 time?  
15 A. I don't remember.  
16 Q. And did your pay change at all  
17 at the time that you transferred to  
18 Florida?  
19 A. I think it did a little bit.  
20 Q. Did it go up or down?  
21 A. I think it went down.  
22 Q. And you don't recall who your  
23 supervisor was when you transferred?

1 A. No. It was somebody in  
2 Mobile, Alabama. I don't remember his  
3 name.  
4 Q. Are you currently employed?  
5 A. Pardon?  
6 Q. Are you currently employed  
7 anywhere?  
8 A. No.  
9 Q. Since your job with Sysco  
10 ended, have you put in any applications to  
11 work anywhere else?  
12 A. No.  
13 Q. Who was your supervisor when  
14 you last worked for Sysco?  
15 A. For?  
16 Q. For Sysco.  
17 A. The last one?  
18 Q. The last supervisor you had  
19 there.  
20 A. Jim Morris -- John Morris.  
21 I'm sorry, John Morris.  
22 Q. What was his title or  
23 position?

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1 A. As far as I know, it was just  
2 supervisor.  
3 Q. Is there anybody else that you  
4 answered to?  
5 A. Besides him?  
6 Q. Yes.  
7 A. No, that was just him.  
8 Q. He would be --  
9 A. Go to him. Otherwise, you  
10 would go above to upper level.  
11 Q. Okay. Did your duties change  
12 as a shuttle driver between the Wisconsin  
13 and the Florida locations?  
14 A. No.  
15 Q. Same pretty much?  
16 A. Uh-huh. I was pulling doubles  
17 in Wisconsin, came down here and I was  
18 pulling doubles.  
19 Q. In Wisconsin, what was your  
20 route? Did you have a standard route you  
21 drove every day?  
22 A. Yes.  
23 Q. And where was that? What

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1 locations were you going between?  
2 A. Well, I was going from Green  
3 Bay, Wisconsin to Baraboo, Wisconsin and  
4 back.  
5 Q. Green Bay to?  
6 A. Baraboo, B-A-R-A-boo, B-O-O.  
7 Q. And your route at the Florida  
8 location was?  
9 A. When I first started in  
10 Florida, it went from Panama City to  
11 Mobile and back to Panama City. And then  
12 it changed.  
13 Q. What did it change to?  
14 A. Panama City to Calera and back  
15 to Panama City.  
16 Q. How long did you drive the  
17 Mobile route before switching?  
18 A. I don't remember what year the  
19 Calera office opened up. So from the time  
20 it opened up, when they opened up, that is  
21 when I switched, from '95 to whenever they  
22 opened.  
23 Q. Okay. Have you worked at any

1 Q. Before the incident that we  
2 are here about today, had you ever had any  
3 type of accident while driving for Sysco?  
4 A. Some minor ones, yes.  
5 Q. Okay. Tell me about the  
6 earliest one of those you can remember.  
7 A. The earliest one I can  
8 remember?  
9 Q. Yeah.  
10 A. Besides hitting deer, running  
11 over deer with the semi?  
12 Q. Yeah, I mean, just --  
13 A. I remember one where a car ran  
14 a red light and bumped the front bumper of  
15 the tractor. This was in Wisconsin.  
16 And I remember -- well, there  
17 was one time in the Calera yard where I  
18 backed into the Thermo King unit.  
19 MR. UMBACH: What did you say  
20 that was?  
21 A. Thermo King unit.  
22 Q. How do you spell that, do you  
23 know?

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Page 32

1 other locations for Sysco besides  
2 Wisconsin and Panama City?  
3 A. That is it.  
4 Q. You mentioned doing a training  
5 course for pulling double trailers at Fox  
6 Valley?  
7 A. Fox Valley Tech, yeah.  
8 Q. Did you do that prior to  
9 coming to work for Sysco?  
10 A. No. I was already working for  
11 Sysco. At the time, I was driving single  
12 trailers. They just legalized double  
13 trailers, so I took the course so I could  
14 drive double trailers.  
15 Q. Did Sysco send you to that  
16 course, or did you take it on your own?  
17 A. I took it on my own.  
18 Q. Do you have to have a certain  
19 special license in Florida to pull double  
20 trailers, or is that covered under your  
21 commercial driver's license?  
22 A. It's covered -- it is a  
23 special license.

1 A. T-H-I-R-M-A-L-K-I-N-G.  
2 Q. What is the Thermo King unit?  
3 A. It's the refrigerating unit.  
4 Q. When did that occur?  
5 A. I don't remember.  
6 Q. Just looking at your  
7 employment at the Florida location, prior  
8 to the accident we are here about today,  
9 did you suffer -- were you involved in any  
10 other accidents before that?  
11 A. Oh, an accident?  
12 Q. Yeah.  
13 A. I do remember when I was  
14 making a right-hand turn, somebody  
15 tried -- you know, if you have got  
16 doubles, somebody came in and slid right  
17 into my middle dolly between the two  
18 trailers. I was found not guilty on that.  
19 Q. When did that happen?  
20 A. I think it was in 2000, 2002,  
21 somewhere around there.  
22 Q. And where did that occur?  
23 A. Panama City.

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1 Q. A passenger car hit the dolly  
2 between --  
3 A. Yes.  
4 Q. Between the two trailers?  
5 A. Yeah.  
6 Q. Were you injured in that at  
7 all?  
8 A. No.  
9 Q. Was the other driver injured?  
10 A. No.  
11 Q. Any damage to your trailers?  
12 A. No.  
13 Q. Besides that incident and the  
14 incident we are here about today, have you  
15 been involved in any other accidents on  
16 the road working at the Panama location?  
17 A. No, not that I can remember.  
18 Q. Do you recall an incident that  
19 occurred on June 2nd, 2004 around Troy,  
20 Alabama when you passed another vehicle  
21 driven by Sysco management? Do you  
22 remember that incident at all?  
23 A. No.

1 ditch?  
2 A. Yes, sir.  
3 Q. What is the last thing that  
4 you remember before ending up in the  
5 ditch?  
6 A. Hitting the brakes.  
7 Q. Describe for me where you were  
8 and where you were going when the accident  
9 happened.  
10 A. I started out in Panama City,  
11 went to Calera, dropped my empty trailers,  
12 picked up my full trailers, and left and  
13 headed back to Panama City.  
14 Q. Okay. And where were you when  
15 the accident happened?  
16 A. I think it's 271 intersection.  
17 MR. MIDDLEMAS: I think that  
18 is it.  
19 A. And 231.  
20 Q. The intersection of 271 and  
21 231?  
22 A. I believe that is the two  
23 roads.

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1 Q. Do you remember talking to  
2 John Cruz about an incident where you  
3 might have passed another vehicle early in  
4 June 2004?  
5 A. No, I don't remember.  
6 Q. You don't recall that at all?  
7 Is Mr. Cruz one of your supervisors?  
8 A. John Cruz?  
9 Q. Yeah.  
10 A. Just another employee.  
11 Q. Another driver?  
12 A. Uh-huh.  
13 Q. All right. Tell me about the  
14 accident that we are here about today. In  
15 your own words, just tell me what date and  
16 time it happened and exactly what  
17 happened.  
18 A. All I can remember about the  
19 accident is what happened when I ended up  
20 in the ditch. Why it happened or  
21 whatever, I don't know. I can't remember.  
22 Q. All right. You say all you  
23 can remember is that you ended up in a

1 Q. I'm going to show you what I'm  
2 going to mark as Defendant's Exhibit 1.  
3 (Whereupon, Defendant's  
4 Exhibit 1 was marked for  
5 identification.)  
6 Q. Can you review that?  
7 A. (Reviewing document.) Okay.  
8 Q. And that is a document  
9 entitled Driver's Report of Accident, is  
10 it not?  
11 A. Yeah.  
12 Q. Did you fill that document  
13 out?  
14 A. Yes.  
15 Q. Do you remember filling that  
16 document out?  
17 A. I don't remember filling it  
18 out, but it's my signature and all.  
19 Q. That is your signature at the  
20 bottom?  
21 A. Yeah.  
22 Q. Okay. Read for me, if you  
23 would, what the brief description of

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1 accident --  
2 A. Came to intersection sooner  
3 than expected, hit brakes and went into  
4 ditch.  
5 Q. Okay. The wreck occurred  
6 there at the intersection?  
7 A. I'm sorry?  
8 Q. The wreck occurred there at  
9 the intersection?  
10 A. Yes.  
11 Q. Is that a "T" intersection?  
12 A. Yes.  
13 Q. When you say in this form that  
14 you came to the intersection sooner than  
15 you expected, can you elaborate on what  
16 you meant by that or what you mean by  
17 that?  
18 A. Just all of a sudden I was on  
19 the intersection and I had to hit the  
20 brakes.  
21 Q. Okay. Did you see the  
22 intersection as you were approaching it?  
23 A. I don't remember. All I can

1 Q. Was the light red or green for  
2 you?  
3 A. I don't know.  
4 Q. Did you lose consciousness at  
5 any point?  
6 A. I don't know. All of a  
7 sudden, I was in the ditch. I don't know  
8 how long I was in the truck. The next  
9 thing I know, I was out of the truck and  
10 somebody was calling the police. They  
11 called the ambulance and took me to the  
12 hospital.  
13 Q. You say the last thing you  
14 remember was hitting the brakes?  
15 A. Hitting the brakes and going  
16 into the ditch.  
17 Q. Where were you in relation to  
18 this intersection when you hit the brakes?  
19 A. Before the intersection.  
20 Q. Before the intersection. Do  
21 you have any estimate how far before the  
22 intersection you were?  
23 A. I don't know.

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1 remember is from hitting the brakes and  
2 going into the ditch.  
3 Q. Okay. How fast were you going  
4 when you hit the brakes?  
5 A. I don't know.  
6 Q. This intersection, is it on  
7 your regular route that you would drive?  
8 A. Yes.  
9 Q. At the time of this accident,  
10 how long had you been driving that route  
11 from Panama City to Calera?  
12 A. Since the time Calera opened  
13 up.  
14 Q. And --  
15 A. Is that when you meant?  
16 Q. Yeah.  
17 A. Okay.  
18 Q. Would you go through this  
19 intersection every time on that route?  
20 A. Every time.  
21 Q. Is there a stop light at that  
22 intersection?  
23 A. There is a stop light, yes.

1 Q. Do you know how fast you were  
2 going when you hit the brakes?  
3 A. I don't know.  
4 Q. All right. I'm going to show  
5 you what I'm going to mark as Defendant's  
6 Exhibit 2, and let me get you to review  
7 that for me.  
8 (Whereupon, Defendant's  
9 Exhibit 2 was marked for  
10 identification.)  
11 A. Okay.  
12 Q. Is that your handwriting on 2?  
13 A. Yes.  
14 Q. Can you read for the Court  
15 what that statement says, please?  
16 A. On Monday, the 28th of June,  
17 around 2:00 p.m. I was heading back to  
18 Panama City yard with two full trailers.  
19 Went south on 65 and turned off on 85 exit  
20 going towards Atlanta. Turned off at exit  
21 number 9, which is highway 271, and headed  
22 east towards 231. Didn't realize I was  
23 close to 231 and 271 intersection and had

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1 to stop. Slid through the intersection  
2 and went into ditch.  
3 Q. How many miles, in your  
4 understanding, is it between exit number 9  
5 on the Highway 271 and the intersection of  
6 231?  
7 A. I don't know.  
8 Q. Is it more than 5 miles?  
9 A. I wouldn't know.  
10 Q. More than a mile?  
11 A. It's more than a mile, yeah.  
12 Q. What is the speed limit on  
13 271?  
14 A. I don't remember.  
15 Q. How fast were you going on 271  
16 approaching that intersection?  
17 A. I don't know.  
18 Q. All right. I'm going to show  
19 you what I'm going to mark as Defendant's  
20 Exhibit 3. I'll get you to review this as  
21 well.  
22 (Whereupon, Defendant's  
23 Exhibit 3 was marked for

1 Q. Okay. Tell me what you did  
2 immediately following the accident.  
3 A. They summoned the police and I  
4 went into the ambulance. We went to the  
5 hospital.  
6 Q. Did you call in to report the  
7 accident?  
8 A. I called John Morris.  
9 Q. How did you call him in?  
10 A. On a cell phone.  
11 Q. And what did you tell  
12 Mr. Morris?  
13 A. I'm sorry?  
14 Q. What did you tell Mr. Morris?  
15 A. I told him I had a bad  
16 accident.  
17 Q. And tell me in as much detail  
18 as you can remember specifically what was  
19 said in that conversation.  
20 A. Just that I called him, I said  
21 that I had a bad accident, you are going  
22 to have to get somebody out here, that --  
23 I can't really remember that much more

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1 identification.)  
2 A. (Reviewing document.)  
3 Q. And that is a document titled  
4 Accident Accountability Statement; is that  
5 right?  
6 A. Uh-huh.  
7 Q. Did you fill that document  
8 out?  
9 A. Yes.  
10 Q. And can you tell the Court  
11 what that says?  
12 A. Came to intersection sooner  
13 than expected and couldn't stop. Shoulder  
14 on left side got hurt. Very large bruise  
15 on the gut and upper arm. Doc says need  
16 MRI. Head hit window, even though seat  
17 belt was on.  
18 Q. Is that your signature at the  
19 bottom of that document?  
20 A. I'm sorry?  
21 Q. That is your signature at the  
22 bottom of that document?  
23 A. Yes.

1 about it.  
2 Q. Did you talk with anybody else  
3 immediately following the accident  
4 employed with Sysco?  
5 A. Did I call anybody?  
6 Q. Call anybody with Sysco other  
7 than --  
8 A. No.  
9 Q. Okay. Were you wearing your  
10 seat belt at the time this accident  
11 happened?  
12 A. Yes.  
13 Q. Describe for the Court what  
14 type of seat belt is in this truck that  
15 you were driving.  
16 A. Just a normal seat belt like  
17 you would have in any other car.  
18 Q. Does it have a waist belt and  
19 a shoulder belt?  
20 A. Right.  
21 Q. And that comes across your  
22 left shoulder?  
23 A. Left shoulder over to the



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1 right.  
2 Q. Was this your regular tractor  
3 that you were driving at the time of this  
4 accident?  
5 A. I don't remember.  
6 Q. Did you have a regular tractor  
7 at that time?  
8 A. Yes.  
9 Q. At the time this happened, you  
10 had already been to Calera and were  
11 returning to Panama City with your second  
12 load of the shift; is that right?  
13 A. At the time what?  
14 Q. At the time the accident  
15 happened, you had already been to the  
16 Calera location?  
17 A. Right.  
18 Q. And were on the --  
19 A. I was on the way back home.  
20 Q. Pulling a set of doubles?  
21 A. Yes.  
22 Q. Was this your regular shift  
23 that you had been working up to this

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1 and driving from Panama City to Calera and  
2 back, how long had you been doing that at  
3 the time of the accident?  
4 A. I think we started around  
5 between 5:00 and 7:00, I can't remember.  
6 But I do remember leaving Calera at  
7 12:30 in the morning. So from Calera down  
8 to the accident, started at 12:30 and then  
9 whatever time it took me to get there.  
10 Q. Okay. You said when you first  
11 went to work at Panama City, you drove a  
12 Panama City to Mobile route?  
13 A. Right.  
14 Q. You later switched to the  
15 Calera route?  
16 A. Yes.  
17 Q. The whole time you were  
18 driving the Calera route, I mean, when you  
19 switched to that in the beginning, was it  
20 the same time frame, leave at 5:00 to  
21 7:00 p.m.?  
22 A. It was earlier.  
23 Q. Earlier?

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1 point?  
2 A. The shift was, but the day was  
3 supposed to be my day off.  
4 Q. What day of the week was this?  
5 A. I believe it was Tuesday.  
6 Q. And what was the time of your  
7 shift?  
8 A. I can't remember the exact  
9 time. I think it started around between  
10 5:00 and 7:00 in the afternoon. Go until  
11 I'm done and back home.  
12 Q. And how much time would it  
13 typically take you to complete that route  
14 and get off work or return to the Panama  
15 City location?  
16 A. I think the average time was  
17 about 9 and a half to 10 hours.  
18 Q. And this was your standard  
19 regular route that you had been driving at  
20 this point?  
21 A. Yes.  
22 Q. How long had you been driving  
23 that route beginning at 5:00 to 7:00 p.m.

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1 A. Yes.  
2 Q. How long, as of the time of  
3 this accident, how many days, weeks,  
4 months would you --  
5 A. I think I started around 9:00  
6 when I went to Mobile and a couple of  
7 hours earlier when I started to go to  
8 Calera.  
9 Q. What I am asking is how long  
10 had that been your regular shift? So the  
11 Calera shift always had you leaving at  
12 that time?  
13 A. Yes.  
14 Q. So you were pretty much  
15 driving through the night?  
16 A. Yes.  
17 Q. And you had been working that  
18 for, I'm assuming, at least a year before  
19 this accident happened?  
20 A. Yes.  
21 Q. Several years?  
22 A. Several.  
23 Q. I know you said it changed

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<p>1 when the Calera location opened, and you 2 don't remember what year that was. But it 3 had been more than a year before this 4 accident happened that you switched? 5 A. Right. 6 Q. And you said this was normally 7 your day off? 8 A. Tuesday was supposed to be my 9 day off. 10 Q. Was that your only day off? 11 A. Friday and Saturday was my day 12 off also. 13 Q. So you would have Tuesdays, 14 Fridays and Saturdays off? 15 A. Yes. 16 Q. And then you would drive this 17 route every other night of the week? 18 A. I'm sorry? 19 Q. You would drive this every 20 other night of the week? 21 A. It would be the same route 22 every day that I had to work. 23 Q. Okay. Were you driving any</p>	<p>1 A. It was getting to be quite 2 regular at the time. 3 Q. Okay. So your standard route 4 would be just to shuttle between those two 5 locations, but sometimes you would have to 6 stop to make pickups? 7 A. Right. 8 Q. And you said something about 9 returns? 10 A. If there is returns on the 11 trailer that the customer refused, that 12 had to be taken into the warehouse. 13 Q. Okay. On this night that the 14 accident happened, had you had to do any 15 other extra stops like that? 16 A. I don't remember. 17 Q. Are you required as a shuttle 18 driver to do a pretrip inspection of your 19 tractor before you take off from Panama 20 City? 21 A. Yes. 22 Q. And is there any type of 23 written form you fill out?</p>
Page 50	Page 52
<p>1 other routes at that time? 2 A. No. 3 Q. Did you have any 4 responsibility for actually unloading or 5 loading the trailers? 6 A. Only when they sent me to pick 7 up food. Like fish house, they would send 8 me there, got it -- load it or unload the 9 trailers. If there is returns on the 10 trailers, you have to take and back it up 11 into the dock and then load those returns. 12 Q. Okay. And I mean would the 13 fish house be part of your route from 14 Panama City to Calera? 15 A. I'm sorry? 16 Q. Is the fish house part of your 17 route from Panama City? 18 A. Sometimes they just call you 19 up and say stop at this certain place to 20 make a pickup. And that is the only thing 21 I can think of right now where they had me 22 stop and pick up some cases of fish. 23 Q. Is that unusual?</p>	<p>1 A. I believe we had written forms 2 we had to fill out. 3 Q. Tell me what the steps in that 4 pretrip inspection would be and what you 5 would have to inspect before leaving. 6 A. You do a walk-around, check 7 your lights, your tires, your air lines, 8 your oil, your belts and water in the 9 engine section. 10 Q. Okay. 11 A. And make sure everything looks 12 fine for going on the highway. 13 Q. Let me show you what I am 14 going to mark as Defendant's Exhibit 4, 15 and get you to look at this for me. 16 (Whereupon, Defendant's 17 Exhibit 4 was marked for 18 identification.) 19 A. (Reviewing document.) 20 Q. That is several pages if you 21 want to look at all those. 22 A. (Reviewing document.) 23 Q. That document is titled Elite</p>



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1 Driver Program Pretrip Form; is that  
2 right?  
3 A. This was, if I remember right,  
4 the supervisor would take you and walk you  
5 around and have you do a pretrip and check  
6 off whichever -- the stuff you did.  
7 Q. Okay. Your name is there at  
8 the top under driver. Is that your  
9 handwriting or did somebody fill that out?  
10 A. That is not my handwriting  
11 there.  
12 Q. And that is dated July 22,  
13 2002. And there is a blank for -- it says  
14 attestor, Jeff Simmons. Was he a  
15 supervisor of yours?  
16 A. I think he was.  
17 Q. Do you recall doing that  
18 pretrip inspection with him?  
19 A. I don't recall.  
20 Q. Okay. Looking at the items on  
21 that form, can you tell me if those were  
22 what you would do as your normal pretrip  
23 inspection?

1 latches.  
2 Q. And would you do this pretrip  
3 inspection again before leaving the Calera  
4 location as well?  
5 A. You were supposed to make a  
6 walk-around on the truck before you leave  
7 the yard and make sure everything is  
8 right.  
9 Q. Are you supposed to stop at  
10 any point in the middle of the trip and do  
11 that as well?  
12 A. I believe you are stopped -- I  
13 can't remember how many hours into your  
14 trip where you stop and check your tires  
15 and make sure they are all doing okay.  
16 Q. Before you left the Calera  
17 location, did you do the pretrip  
18 inspection there?  
19 A. Yes.  
20 Q. Did you check the seat belt at  
21 that time?  
22 A. Yes.  
23 Q. Did you wear your seat belt

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1 A. Like the overview of the  
2 tractor, yes. Check under your hood,  
3 yeah.  
4 Q. Okay. Looking down to what is  
5 highlighted in blue there under in the  
6 cab, it says verify that the seat belt is  
7 operational?  
8 A. Uh-huh.  
9 Q. Is that part of your normal  
10 pretrip inspection?  
11 A. Yes.  
12 Q. How do you do that? How do  
13 you make sure the seat belt is  
14 operational?  
15 A. Make sure you can bring it  
16 around and hook it up.  
17 Q. Did you do that on the date of  
18 your accident before leaving Panama City?  
19 A. Yes.  
20 Q. So is it simply a matter of  
21 making sure that it fits all the way  
22 around you and clips in?  
23 A. Make sure it comes around and

1 when you left the Calera location?  
2 A. Yes.  
3 Q. Did you stop at any time  
4 between Calera and where the accident  
5 occurred?  
6 A. No.  
7 Q. When you put the seat belt on,  
8 did you bring it across your left shoulder  
9 and buckle it?  
10 A. Just down and hooked it up  
11 just like you are supposed to.  
12 Q. Did anybody at Sysco ever show  
13 you or give you any instructions on the  
14 proper way to fasten your seat belt to  
15 wear it?  
16 A. No.  
17 Q. You understand that that belt  
18 is supposed to be over from left shoulder  
19 to the bottom hip?  
20 A. Yes.  
21 Q. At any point from your trip to  
22 Calera until this accident happened, did  
23 you move that shoulder belt to any part of

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1 your body? Did you move it under your  
2 left arm?  
3 A. No.  
4 Q. Did you ever ride with your  
5 shoulder belt anywhere other than going  
6 over your left shoulder?  
7 A. I'm sorry, I didn't get that.  
8 Q. Did you ever, working for  
9 Sysco, drive your trailer with your  
10 shoulder seat belt going anywhere other  
11 than your left shoulder; in other words,  
12 hooked under your left arm?  
13 A. I don't know what you are  
14 asking.  
15 Q. Did you ever put that belt  
16 anywhere other than where it goes over  
17 your shoulder?  
18 A. Yes.  
19 Q. You did?  
20 A. Uh-huh.  
21 Q. Where else did you put it?  
22 A. Yes.  
23 Q. Where else?

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1 A. Behind my back.  
2 Q. Would you have the waist belt  
3 behind your back as well?  
4 A. No.  
5 Q. How would you manage that? I  
6 mean, is it the shoulder belt is going  
7 back behind you?  
8 A. Waist belt would go in front.  
9 Q. Were you wearing it that way  
10 on the night this accident happened?  
11 A. No.  
12 Q. When would you wear it that  
13 way?  
14 A. It just depends on -- you  
15 know, you jump in the truck in a hurry,  
16 you flip it over. It's not -- sometimes I  
17 do it and sometimes I don't.  
18 Q. Did you understand that was  
19 not a proper way to wear the safety belt?  
20 A. I was told that, yes.  
21 Q. Who told you that?  
22 A. John Morris.  
23 Q. And did Mr. Morris witness you

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1 wearing the belt that way? Did he see  
2 you?  
3 A. Yes.  
4 Q. When did that happen?  
5 A. I don't remember.  
6 Q. How did he see this? Was he  
7 in the truck with you?  
8 A. He was in the yard hooking up  
9 trailers. And he said -- he thought I  
10 didn't have my seat belt on, and I did. I  
11 just didn't have the shoulder belt on.  
12 Q. And he told you at that time  
13 you needed to wear the shoulder belt as  
14 well?  
15 A. Yeah.  
16 Q. How many times did that happen  
17 that he told you about that?  
18 A. Just once.  
19 Q. Do you know if he wrote you up  
20 for that?  
21 A. No, he didn't write me up.  
22 Q. Is the belt uncomfortable  
23 going over the shoulder?

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1 MR. MIDDLEMAS: Object to the  
2 form of the question. You go ahead and  
3 answer.  
4 A. Not really.  
5 Q. What was your reason for  
6 putting that belt back behind you?  
7 A. Just a habit.  
8 Q. Was it more comfortable behind  
9 your back?  
10 A. I think so.  
11 Q. And the date of the accident  
12 we are here about is June 29th, 2004; is  
13 that correct?  
14 A. I'm not sure what the date is.  
15 Q. Okay. Looking at Defendant's  
16 Exhibit 1, the date you have written there  
17 was 6/29/04.  
18 A. Okay.  
19 Q. Was that, in your  
20 understanding, the date the accident  
21 occurred?  
22 A. Okay.  
23 Q. Is that right?

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1 A. I don't remember it. But that  
2 is what is written down, yeah, 6/29.  
3 Q. I mean, you don't have any  
4 reason to dispute that is the correct  
5 date, considering that is the date that  
6 you put on the --  
7 A. I don't have any reason for  
8 it.  
9 Q. When you left Panama City that  
10 night around 5:00 to 7:00 p.m. to start  
11 your load, did you fasten your seat belt  
12 with the belt in front of your shoulder or  
13 behind your back?  
14 A. In front.  
15 Q. Did you have it that way the  
16 entire trip to Calera?  
17 A. Yes.  
18 Q. Did you stop at any point on  
19 that trip to Calera?  
20 A. Did I stop, no.  
21 Q. Didn't have any returns or  
22 pickups? Didn't have to go by the fish  
23 house?

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1 A. I can't remember about pickups  
2 and I can't remember if I had any returns  
3 or not. Once you get to Calera yard, you  
4 have to drop your trailers and hook up to  
5 the full ones.  
6 Q. When you got back in the cab  
7 at Calera to come back to Panama City, did  
8 you hook your seat belt up when you got in  
9 the cab?  
10 A. I had the seat belt on when I  
11 got back in the cab.  
12 Q. Did you have it over your  
13 shoulder or behind your back?  
14 A. Over the shoulder.  
15 Q. Did you stop at any point  
16 before the accident happened?  
17 A. No.  
18 Q. Let me show you what I am  
19 going to mark as Defendant's Exhibit 5.  
20 (Whereupon, Defendant's  
21 Exhibit 5 was marked for  
22 identification.)  
23 Q. This is the police report

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1 dated June 29th, 2004, if you could look  
2 at that.  
3 MR. MIDDLEMAS: I'm going to  
4 place an objection to the police report  
5 being a hearsay document. Go ahead and  
6 answer his questions.  
7 Q. Have you seen that document  
8 before?  
9 A. I think I did.  
10 Q. Okay.  
11 A. (Reviewing document.)  
12 Q. Did you talk to the police  
13 when they arrived at the accident scene?  
14 A. I don't remember.  
15 Q. Look, if you would, on the  
16 back of Defendant's Exhibit 5 at the  
17 drawing. And if you would look at the --  
18 the drawing shows a tractor with two  
19 trailers in the intersection there of 271/  
20 231. Is that a fair representation of  
21 what the accident scene was, in your  
22 opinion?  
23 A. It looks like it.

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1 Q. If you look at the statement  
2 under that, if you could read that?  
3 MR. MIDDLEMAS: I'm going to,  
4 again, place an objection to the entry of  
5 this police report. Go ahead and read it.  
6 A. Vehicle one was traveling  
7 southbound on Taylor Road. Driver of  
8 vehicle one went to sleep, causing him to  
9 lose control of the vehicle. Vehicle one  
10 went through the traffic signal and left  
11 the roadway and collided with the ditch.  
12 Q. Is that a fair and accurate  
13 description of what occurred?  
14 A. I don't know.  
15 Q. Did you fall asleep --  
16 A. I don't know.  
17 Q. -- before the accident  
18 happened?  
19 A. I don't know.  
20 Q. You don't know?  
21 A. If I fell asleep, how did I  
22 put the brakes on?  
23 Q. So as we sit here today, you

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1 do not know whether you fell asleep prior  
2 to this accident happening or not?  
3 A. I don't know.  
4 Q. Do you know if you told the  
5 police officer that you fell asleep?  
6 A. I don't remember talking to  
7 anybody.  
8 Q. Did you tell John Morris you  
9 fell asleep?  
10 A. No.  
11 Q. Do you recall if John Morris  
12 asked you how the accident happened?  
13 A. No, I don't remember anybody  
14 asking me how -- you are talking about the  
15 police at the time of the accident?  
16 Q. I'm asking when you called  
17 John Morris on the cell phone. In the  
18 course of that conversation, did he ask  
19 you how the accident happened?  
20 A. Oh, when I first reported it?  
21 Q. Right.  
22 A. No, I don't remember him  
23 asking me about it.

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1 Q. He didn't inquire as to how  
2 the accident happened?  
3 A. He didn't --  
4 Q. You are saying he did not  
5 inquire of you about how the accident  
6 happened?  
7 A. All I remember is I called him  
8 up and told him that I had had a bad  
9 accident and where it was.  
10 Q. There were no other cars  
11 involved in this accident?  
12 A. I'm sorry?  
13 Q. There were no other cars  
14 involved in this accident?  
15 A. Not that I am aware of, not by  
16 me.  
17 Q. Are you aware of any other  
18 witnesses to this accident?  
19 A. I don't know who, if there was  
20 any. Somebody called the police. I  
21 didn't.  
22 Q. You didn't call the police?  
23 A. No.

1 Q. Did you speak with anyone at  
2 the scene of the accident besides the  
3 police?  
4 A. All I remember is somebody  
5 asking me are you all right. Who it was,  
6 I couldn't tell you.  
7 Q. Somebody other than a police  
8 officer?  
9 A. Yes.  
10 Q. Male or female?  
11 A. I don't remember.  
12 Q. Were you sitting in your truck  
13 when they asked you this?  
14 A. Yes.  
15 Q. Do you know if they had exited  
16 a vehicle?  
17 A. I'm sorry?  
18 Q. Do you know if they had been  
19 in a vehicle?  
20 A. I don't know.  
21 Q. What did you tell them?  
22 A. I told them I think so.  
23 Q. Did you lose consciousness at

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1 any point when the accident happened?  
2 A. I don't know.  
3 Q. Do you remember the actual  
4 impact with the ditch?  
5 A. That is the only thing I can  
6 remember.  
7 Q. Describe for me what happened  
8 as far as when the impact was made with  
9 the ditch, what parts of your body  
10 collided with parts of the truck. Just  
11 describe for me what happened to your body  
12 when the impact was made.  
13 A. I'm bracing myself at the  
14 wheels and all of a sudden being pulled  
15 forward and it seemed like I was hitting  
16 the windshield.  
17 Q. You said it seemed like you  
18 were hitting the windshield?  
19 A. Yes.  
20 Q. Did your head hit the window,  
21 windshield?  
22 A. I think it did.  
23 Q. Did any other part of your

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1 body hit the windshield?  
2 A. Not that I am aware of.  
3 Q. Did any part of your body hit  
4 the steering wheel?  
5 A. I don't think so.  
6 Q. Any part of your body hit the  
7 dashboard?  
8 A. No. You have the steering  
9 wheel in your way.  
10 Q. Okay. In Defendant's  
11 Exhibit 3, which is the Accident  
12 Accountability Statement you filled out,  
13 you wrote that your shoulder on your left  
14 side got hurt and you had a very large  
15 bruise on your gut and upper arm. And  
16 then you said doc says need MRI, hit head  
17 window, even though seat belt was on.  
18 Did any other part of your body  
19 besides your head hit any part of the  
20 truck?  
21 A. I don't remember.  
22 Q. Did your shoulder hit any part  
23 of the truck?

1 first trailer was off the road and part of  
2 the second trailer was sticking in the  
3 road.  
4 Q. And you sat on the bumper of  
5 the last trailer and waited for the  
6 police?  
7 A. Yes. I think the police were  
8 there already.  
9 Q. How long did you remain in the  
10 cab before you got out?  
11 A. I don't know.  
12 Q. Were the police there when you  
13 got out of the cab?  
14 A. I don't think so. I think  
15 they were pulling up as I got out.  
16 Q. And you don't recall whether  
17 or not you talked to a police officer?  
18 A. I don't recall.  
19 Q. Where did the ambulance take  
20 you, what hospital?  
21 A. I think it was Montgomery  
22 hospital, I think. I'm not sure.  
23 Q. Were you seen in the emergency

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1 A. It could have.  
2 Q. You don't remember?  
3 A. Don't remember.  
4 Q. Was your seat belt still  
5 intact and fastened around you after the  
6 truck came to a stop?  
7 A. Yes.  
8 Q. Is there any type of air bag  
9 in that trailer?  
10 A. I'm sorry, any type of what?  
11 Q. Air bag.  
12 A. No.  
13 Q. You said that you were taken  
14 from the scene by ambulance?  
15 A. Yes.  
16 Q. Were you able to get out of  
17 the truck on your own power?  
18 A. Yeah. I got out of the truck  
19 and I sat down at the back bumper of the  
20 last trailer and called the ambulance.  
21 Q. Was the entire truck and both  
22 trailers off the road at this point?  
23 A. I think the tractor and the

1 room?  
2 A. Yeah.  
3 Q. Was that at Jackson hospital?  
4 A. I don't know.  
5 Q. Were you given a drug test in  
6 the emergency room?  
7 A. I'm sorry?  
8 Q. Were you given a drug test in  
9 the emergency room, drug screen?  
10 A. I don't remember if I was or  
11 not.  
12 Q. Describe for me what took  
13 place in the emergency room. Did they do  
14 x-rays, any type of exam?  
15 A. They had somebody come and  
16 look at me, look me over and they didn't  
17 do any x-rays or nothing. They just  
18 prescribed some medication for the pain.  
19 And if it continued, they said go see the  
20 doctor again.  
21 Q. Did you actually have a doctor  
22 examine you in the emergency room?  
23 A. I think it was a doctor.



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1 Q. Did they do any x-rays that  
2 you recall?  
3 A. I don't remember them doing no  
4 x-rays.  
5 Q. At that time in the ER, did  
6 you have the bruise on your shoulder and  
7 your gut?  
8 A. I don't know.  
9 Q. You were not admitted to the  
10 hospital that night though?  
11 A. Admit -- all they did is took  
12 me to the emergency room and then somebody  
13 picked me up afterwards.  
14 Q. Who picked you up?  
15 A. I think it was Mr. Brown. I'm  
16 not sure.  
17 Q. Mr. Brown?  
18 A. I don't know his first name.  
19 Q. Is he with Sysco?  
20 A. I'm sorry?  
21 Q. Is he with Sysco?  
22 A. Yeah.  
23 Q. What is his position?

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1 A. I don't know.  
2 Q. And did he take you back to  
3 Panama City?  
4 A. He took me back to, I think,  
5 the accident site. And then another  
6 person met -- took me back to Troy. I  
7 think it was Troy, and there my sister  
8 picked me up and -- met and picked me up  
9 there.  
10 Q. Mr. Brown took you to the  
11 accident site?  
12 A. I think so.  
13 Q. What did you do there?  
14 A. I don't remember.  
15 Q. Was anybody else there with  
16 you and Mr. Brown?  
17 A. I believe so.  
18 Q. Who else was there?  
19 A. I don't remember.  
20 Q. Did Mr. Brown discuss the  
21 accident with you?  
22 A. I think he did.  
23 Q. Do you recall that

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1 conversation, what you told him?  
2 A. I don't recall it.  
3 Q. Did he ask you how it  
4 happened?  
5 A. I think he did.  
6 Q. And do you have any  
7 recollection of what you told him?  
8 A. No.  
9 Q. And he took you to Troy,  
10 Alabama?  
11 A. It wasn't him. It was  
12 somebody else. I'm not sure who.  
13 Q. Somebody else with Sysco?  
14 A. Yes.  
15 Q. There were other Sysco  
16 employees there at the accident scene?  
17 A. Yes.  
18 Q. And you say your sister picked  
19 you up in Troy?  
20 A. Yes.  
21 Q. What is her name?  
22 A. Margaret Loberger,  
23 L-O-B-E-R-G-E-R.

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1 Q. Did she take you back to  
2 Panama City?  
3 A. Yes.  
4 Q. Where does she live?  
5 A. 3907 West 19th Street.  
6 Q. Is that in Panama City?  
7 A. Yes.  
8 Q. Were you scheduled to work  
9 that next day?  
10 A. Yes.  
11 Q. Wednesday?  
12 A. Yes.  
13 Q. Did you go to work?  
14 A. No.  
15 Q. Did you discuss with anybody,  
16 your supervisor or anybody else not going  
17 to work? I mean, did you call in? Did  
18 you have a doctor's excuse?  
19 A. I don't remember.  
20 Q. You don't recall informing  
21 anybody with Sysco you were not going to  
22 be working that day?  
23 A. No, I can't remember.

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1 Q. Did you return to work at  
2 Sysco at any point after the accident?  
3 A. No.  
4 Q. Why were you working on your  
5 day off?  
6 A. I don't know. They didn't  
7 have anybody to drive, so he called me in.  
8 Q. Who called you in?  
9 A. John Morris.  
10 Q. At what point did he call you  
11 in? Was it actually that day? Did he  
12 call you at home Tuesday and say you need  
13 to come in, even though it's your day off?  
14 A. I think, if I remember right,  
15 when you have a day off like that, you  
16 still have to call in to your mailbox and  
17 he'll tell you whether you have to come in  
18 or not, or if you have the day off.  
19 Q. So even if it's your day off,  
20 you still have to call in and see if they  
21 need you?  
22 A. Yes.  
23 Q. What had you done that Tuesday

1 mailbox, find out what is going on and  
2 then go to the yard.  
3 Q. So the calling in would be  
4 something you would do in the afternoon  
5 after you got up several hours before the  
6 next shift had begun?  
7 A. Yes.  
8 Q. On the day that the accident  
9 happened, is that what you did, did you  
10 sleep until the afternoon, get up and call  
11 in on your shift to see if you had to go  
12 in?  
13 A. Yes.  
14 Q. Did you do anything else that  
15 day?  
16 A. Nothing special that I can  
17 think of.  
18 Q. Did you sleep from the time  
19 you got in on your shift before until the  
20 time you woke up and called?  
21 A. I don't know.  
22 Q. You don't remember?  
23 A. (Witness shakes head.)

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1 prior to going in to work?  
2 A. I don't remember.  
3 Q. Working this shift, would you  
4 normally sleep through the day?  
5 A. You would normally sleep  
6 through the day.  
7 Q. I guess, what time would you  
8 typically get in from that shift?  
9 A. Probably about 5:00 or 6:00 in  
10 the morning.  
11 Q. Would you immediately, as a  
12 matter of habit, immediately go home and  
13 go to bed at that time?  
14 A. Right.  
15 Q. What time would you usually  
16 get up?  
17 A. I think around 3:00 or 4:00 in  
18 the afternoon.  
19 Q. And what typically would you  
20 do before going in to begin your shift,  
21 just eat a meal, personal business, that  
22 kind of thing?  
23 A. Eat a meal, call in your

1 Q. On the day the accident  
2 happened on the 29th, had you taken any  
3 medication at all?  
4 A. For my blood pressure and  
5 diabetes.  
6 Q. And what meds had you taken  
7 for your blood pressure and diabetes?  
8 A. I would have to go look at  
9 them.  
10 Q. Are you taking those same  
11 medications currently?  
12 A. Yes.  
13 Q. Any other medications besides  
14 those?  
15 A. At the time, no.  
16 Q. Had you had anything alcoholic  
17 to drink on the 29th?  
18 A. No.  
19 Q. Do you drink alcohol as a  
20 matter of course?  
21 A. Very, very seldom.  
22 Q. Do you drink coffee as a rule?  
23 A. Coffee?



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1 Q. Yeah.  
2 A. I used to yeah.  
3 Q. Had you had any coffee before  
4 leaving on your shift on the 29th?  
5 A. Yes.  
6 Q. Did you have any coffee before  
7 returning from Calera on your shift that  
8 day?  
9 A. I don't think so.  
10 Q. How much coffee had you had  
11 before you left Panama City?  
12 A. About a cup.  
13 Q. As a rule, would you carry  
14 coffee with you in the cab?  
15 A. No.  
16 Q. When you got back to Panama  
17 City, was that actually the next day,  
18 June 30th, that you got back?  
19 A. I believe so.  
20 Q. In other words, you went to  
21 the ER, went back to the accident scene,  
22 and then immediately went back. So it  
23 would have been the next day after the

1 you?  
2 A. Who?  
3 Q. Who told you what doctor to go  
4 to?  
5 A. I think there was a list at  
6 the time where the company has programs to  
7 go to certain doctor areas.  
8 Q. What I'm asking though is:  
9 Did John Morris tell you to go to the  
10 doctor?  
11 A. No, I don't think so.  
12 Q. Did anybody at Sysco tell you  
13 to go to the doctor?  
14 A. No. I was just hurting bad  
15 and I decided to go to the doctor. And  
16 since it was work-related, I went to the  
17 one for workmen's comp.  
18 Q. How did you know which doctors  
19 were the workmen's comp doctors?  
20 A. I think there was a list at  
21 the time.  
22 Q. Is that posted some --  
23 A. I'm sorry?

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1 accident happened that you were back in  
2 Panama City?  
3 A. They dropped me off at the  
4 accident scene where other employees were,  
5 and then somebody volunteered or something  
6 to meet my sister in Troy.  
7 Q. Okay. When you got back to  
8 Panama City, what did you do? Did you go  
9 home?  
10 A. I think the next day I went to  
11 the doctor for workmen's comp because my  
12 shoulder wasn't working. I couldn't raise  
13 my arm or nothing. And I think he sent me  
14 in for an MRI and then we found out that  
15 the muscles were torn off of the bone in  
16 my shoulder.  
17 Q. Who sent you to the doctor?  
18 A. The first one, workmen's comp  
19 doctor. I got hurt on the job so that  
20 is -- I went to the place where -- there  
21 was a list where you had to go for them to  
22 check me out.  
23 Q. Was it John Morris? Who told

1 Q. The list was posted somewhere  
2 at a location --  
3 A. I think everybody had a list.  
4 I think it was handed out to everybody.  
5 Q. You had a list yourself?  
6 A. Not anymore, but I had it.  
7 Q. What doctor did you go to?  
8 A. It was at Bay Medical Clinic,  
9 I believe.  
10 Q. And what is the name of the  
11 doctor there that you saw?  
12 A. I don't remember.  
13 Q. Had you been seen there at the  
14 Bay Medical Clinic before?  
15 A. Yes. It's the same place  
16 where they send you for drug tests.  
17 Q. Other than drug tests, had you  
18 gotten any treatment at the Bay Medical  
19 Clinic before?  
20 A. No.  
21 Q. Had you ever had any  
22 work-related injuries working for Sysco  
23 before this accident?

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1 A. No.  
2 Q. And you said the doctor at the  
3 Bay Walk-In Clinic sent you for an MRI?  
4 A. I think it was him that sent  
5 me. Either that or they sent me to  
6 Goodwiller and Goodwiller sent me for the  
7 MRI. I can't remember who was the one  
8 that originally sent me there.  
9 Q. Dr. Goodwiller is your  
10 surgeon?  
11 A. Yes.  
12 Q. Other than Dr. Goodwiller and  
13 the doctor at the Bay Walk-In Clinic and  
14 of course the ER doc up in Montgomery,  
15 have you seen or been treated by any other  
16 doctors for this injury?  
17 A. No.  
18 Q. Just to recap, you said that  
19 you called John Morris from the cab  
20 immediately after the accident happened;  
21 is that right?  
22 A. Right.  
23 Q. And then Mr. Brown picked you

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1 up from the ER and took you to the  
2 accident scene?  
3 A. I believe so.  
4 Q. And he discussed the accident  
5 with you at that time as well?  
6 A. I think he did.  
7 Q. Did you discuss the accident  
8 with anybody else at the accident scene,  
9 anybody else with Sysco?  
10 A. The other person that took me  
11 to Troy, I think he might have been asking  
12 me questions about it too.  
13 Q. Do you remember who that was?  
14 A. I don't remember who it was.  
15 Q. Do you remember the substance  
16 of that conversation at all?  
17 A. I don't know.  
18 Q. After that day, after you got  
19 back to Panama City, did you have any  
20 other conversations with anybody at Sysco  
21 about the accident?  
22 A. I don't believe I did.  
23 Q. Did you talk to John Morris

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1 about the accident at any time after you  
2 got back to Panama City?  
3 A. I don't remember.  
4 Q. Did you call in to Sysco for  
5 any reason after you got back after the  
6 accident?  
7 A. Just to let them know that I  
8 was injured on the job and I have to go  
9 get an MRI.  
10 Q. Do you know who you spoke to  
11 at that time?  
12 A. I think I told John Morris.  
13 Q. Okay. In your understanding,  
14 was your accident and your injury reported  
15 as a worker's compensation claim?  
16 A. Yes.  
17 Q. And that was reported as a  
18 Florida worker's compensation claim?  
19 A. I think so.  
20 Q. Did you receive benefits for  
21 the time that you were off work after the  
22 accident?  
23 A. From workmen's comp?

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1 Q. Yeah.  
2 A. Yes.  
3 Q. When did those begin, how long  
4 after the accident?  
5 A. I don't remember. Do you have  
6 anything for that?  
7 MR. MIDDLEMAS: That is okay.  
8 You testify from your memory, that is  
9 fine.  
10 Q. How much did you get per week?  
11 A. I think it was over \$600.  
12 Q. Over 600 per week?  
13 A. Yeah.  
14 Q. Are you still getting those  
15 benefits today?  
16 A. No.  
17 Q. When is the last time you  
18 received those?  
19 A. I don't remember.  
20 Q. What did Dr. Goodwiller tell  
21 you when you first went to see him?  
22 A. What did he tell -- what?  
23 Q. Did you discuss your injuries

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(Pages 89 to 92)

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1 with him when you first went to see him?  
2 A. He told me the MRI showed that  
3 the bone was -- the muscle was torn off  
4 the bone. And apparently, there was three  
5 different muscles involved and that is why  
6 I couldn't raise my arm up all the way.  
7 And it would -- you would have to go in  
8 and reattach the muscles right away before  
9 they started curling back up on  
10 themselves. And we went to the operating  
11 room from there.  
12 Q. He did surgery on your left  
13 shoulder on late July of 2004, July 29,  
14 2004; does that sound right?  
15 A. It wasn't in the first week or  
16 something like that of July? It was in  
17 July. That is all I can remember.  
18 Q. Has he just done one surgery  
19 on your shoulder?  
20 A. I'm sorry?  
21 Q. Did he ever go back and do  
22 another surgery?  
23 A. No.

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1 Q. In the ER in Montgomery, did  
2 you receive any treatment for any head  
3 injury?  
4 A. No.  
5 Q. At any time after that, have  
6 you received any treatment from any doctor  
7 for any head injury from this accident?  
8 A. No.  
9 Q. Any injury affecting your  
10 stomach, your abdomen at all?  
11 A. I went back to the doctor  
12 because it was really black, the bruise,  
13 and I was concerned about it. And he  
14 looked at it and he said that is just from  
15 the seat belt.  
16 Q. And which doctor?  
17 A. I think it was the original  
18 workmen's comp doctor.  
19 Q. At Bay Walk-In Clinic?  
20 A. I think that is the Bay  
21 Walk-In Clinic, yeah.  
22 Q. Did you have any pain in your  
23 head after the accident happened?

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1 A. I don't think so.  
2 Q. Was the windshield damaged in  
3 any way?  
4 A. I don't think so.  
5 Q. Did you ever have any bruise  
6 on your head anywhere?  
7 A. I'm sorry?  
8 Q. Did you ever have a bruise on  
9 the head?  
10 A. No.  
11 Q. Any visible mark on the head  
12 at all?  
13 A. I don't remember. I don't  
14 remember ever having a bruise on my head.  
15 Q. All right. So aside from the  
16 bruise on your shoulder and the bruise on  
17 your stomach, did you have any bruises  
18 anywhere else on your body?  
19 A. I don't believe so.  
20 Q. Did you have any cuts anywhere  
21 else on your body?  
22 A. No.  
23 Q. Did your legs or anything

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1 below your waist hit anywhere on the  
2 truck, or was that lower part of your body  
3 injured in any way?  
4 A. No.  
5 Q. Did you have any pain in any  
6 part of your body following the accident  
7 other than --  
8 A. Back. Back was bad.  
9 Q. What part of your back was  
10 hurting?  
11 A. I couldn't twist like I used  
12 to.  
13 Q. Did that eventually go away?  
14 A. No.  
15 Q. You still have that problem  
16 today?  
17 A. Yes.  
18 Q. Have you had any medical  
19 treatment for that problem?  
20 A. No.  
21 MR. SEGREST: We probably need  
22 to take a break.  
23 (Short break taken.)

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1 Q. (BY MR. SEGREST:)  
2 Mr. Fischer, before the break, we were  
3 talking about the accident or the injuries  
4 that you suffered in this accident. And  
5 let me just kind of recap. You said that  
6 you had problems with your shoulder that  
7 Goodwiller eventually did surgery on; is  
8 that right?  
9 A. Right.  
10 Q. And immediately following the  
11 accident and when you were seen in the ER  
12 and, say, the day following the accident,  
13 was there a bruise or a mark on your  
14 shoulder?  
15 A. I don't remember.  
16 Q. Okay. There was at some point  
17 a bruise on your gut, as you referred to  
18 it?  
19 A. Yes.  
20 Q. And you got scared because  
21 that was real dark at some point?  
22 A. Yes, sir.  
23 Q. Did that appear immediately

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1 after the accident?  
2 A. I don't remember.  
3 Q. When was it that you got  
4 concerned about how dark it was and went  
5 to the doctor?  
6 A. I think it was maybe one or  
7 two days. I'm just guessing. I don't  
8 remember.  
9 Q. You don't still have that  
10 bruise today, do you?  
11 A. No.  
12 Q. How big was it?  
13 A. From one end of your hip to  
14 the other end.  
15 Q. Was that where the seat belt  
16 would have gone across your stomach?  
17 A. Yes, sir.  
18 Q. Did it extend up to the upper  
19 part of your chest at all?  
20 A. I don't think so.  
21 Q. After the truck came to a stop  
22 after the accident, did you remove your  
23 seat belt or did somebody remove it for

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1 you?  
2 A. I did.  
3 Q. Did you do that before anybody  
4 got to the accident scene?  
5 A. I don't know. I don't know  
6 what was going on outside of the truck.  
7 Q. Did you do it -- you said  
8 somebody came up to you and asked you if  
9 you were okay?  
10 A. Yes.  
11 Q. While you were still in the  
12 cab?  
13 A. Yes.  
14 Q. At that point, did you still  
15 have your seat belt on?  
16 A. I don't remember.  
17 Q. Also to recap, earlier I had  
18 asked you did you have any mark on your  
19 head where it may have hit something and  
20 you said -- did you have any mark on your  
21 head?  
22 A. I don't remember if I had any  
23 marks on my head or not.

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1 Q. Okay. And was there any mark  
2 on the windshield? Was the windshield  
3 damaged in any way?  
4 A. I don't think so.  
5 Q. I think I already asked you  
6 this as well, was any other part of the  
7 truck, the steering wheel or dash damaged  
8 in any way?  
9 A. I don't know.  
10 Q. Okay. I'm going to show you  
11 what I am going to mark as Defendant's  
12 Exhibit 6, and represent to you this is a  
13 photograph of the truck taken after the  
14 accident.  
15 (Whereupon, Defendant's  
16 Exhibit 6 was marked for  
17 identification.)  
18 Q. And let me get you to look at  
19 that, if you would.  
20 A. (Reviewing photograph.)  
21 Q. Would you have any reason to  
22 dispute that is the truck?  
23 A. I'm sorry?

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<p>1 Q. Would you have any reason to 2 dispute that is the truck you are driving? 3 A. No. 4 Q. That looks like the truck you 5 were driving? 6 A. It looks like it. 7 Q. I'm going to show you what I 8 am going to mark as Defendant's Exhibit 7, 9 and get you to look at this as well. And 10 I'm going to represent to you that is a 11 picture of the truck windshield 12 (indicating). 13 (Whereupon, Defendant's 14 Exhibit 7 was marked for 15 identification.) 16 A. Whew, I don't remember that at 17 all. 18 Q. If you could, look back at 19 Defendant's Exhibit 6 and look at the 20 windshield there and tell me if you see a 21 spider web break similar to what is shown 22 on Defendant's Exhibit 7. 23 A. (Reviewing photograph.) I</p>	<p>1 and were able to see and hear, were you 2 not? 3 A. Right. 4 Q. And you did not notice the 5 windshield being broken? 6 A. No, I didn't. 7 Q. Do you have any idea what 8 could have broken the windshield like 9 that? 10 A. Probably my head. 11 Q. Probably your head, okay. Did 12 your head hit that windshield because you 13 weren't wearing your shoulder strap on 14 your seat belt? 15 MR. MIDDLEMAS: Object to the 16 form of the question. 17 Q. Is that what happened? 18 A. No. 19 Q. That is not what happened? 20 A. I don't know why I hit the 21 windshield. 22 Q. But it did hit the windshield? 23 A. I don't know. It looks like</p>
Page 98	Page 100
<p>1 didn't remember that at all. 2 Q. You don't remember seeing 3 that? 4 A. I don't remember it, period. 5 Q. You don't remember there being 6 a spider web fracture? 7 A. I don't remember seeing it 8 until just now. 9 Q. Did you go around and look at 10 the truck when you were taken back to the 11 site with Mr. Brown? 12 A. No. The truck was gone by the 13 time I got back. 14 Q. It was just the accident site? 15 A. It was just the accident area. 16 Q. Immediately after the accident 17 when you were in the cab of the truck 18 before you got out, did you lose 19 consciousness at any point? 20 A. I don't remember. 21 Q. At some point though while you 22 were still in the cab, you had all of your 23 senses about you or regained your senses</p>	<p>1 it. 2 Q. Your testimony under oath here 3 today is you don't remember whether your 4 head hit the windshield or not? 5 A. I don't. 6 Q. Mr. Fischer, if you had had 7 your shoulder belt on the seat belt, your 8 head would not have hit the windshield, 9 would it? 10 MR. MIDDLEMAS: Object to the 11 form of the question. 12 A. If what? 13 Q. If you had had the shoulder 14 belt on your seat belt fastened, your head 15 would not have hit the windshield, right? 16 MR. MIDDLEMAS: Same 17 objection. 18 A. I had it on. 19 Q. Were you presented with an 20 Employee Handbook at Sysco? 21 A. Yes. 22 Q. And was that something you 23 would receive every year? Would they give</p>



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Page 101	Page 103
<p>1 you a new one?</p> <p>2 A. I think it's every year.</p> <p>3 Q. Every year. And you would</p> <p>4 sign an acknowledgment that you would</p> <p>5 receive that handbook; is that right?</p> <p>6 A. Yes.</p> <p>7 Q. Let me show you what I will</p> <p>8 collectively mark as Defendant's Exhibit</p> <p>9 8, and get you to look at these and tell</p> <p>10 me if these bear your signature.</p> <p>11 (Whereupon, Defendant's</p> <p>12 Exhibit 8 was marked for</p> <p>13 identification.)</p> <p>14 A. (Reviewing document.)</p> <p>15 Q. Is that your signature on all</p> <p>16 three of those documents?</p> <p>17 A. Yes.</p> <p>18 Q. Let me get you also to look at</p> <p>19 what I am going to mark as Defendant's</p> <p>20 Exhibit 9. In addition to the handbook,</p> <p>21 would you also be given a safety manual</p> <p>22 each year?</p> <p>23 (Whereupon, Defendant's</p>	<p>1 time?</p> <p>2 A. I believe so.</p> <p>3 (Whereupon, Defendant's</p> <p>4 Exhibit 10 was marked for</p> <p>5 identification.)</p> <p>6 Q. Let me have you look at what I</p> <p>7 will mark as Defendant's Exhibit 10, which</p> <p>8 I'll represent to you is a copy of the</p> <p>9 safety manual. And look, if you would, to</p> <p>10 page 361, which is marked there with a</p> <p>11 star, and it's marked at the bottom about</p> <p>12 seat belts.</p> <p>13 A. (Reviewing document.) Uh-huh.</p> <p>14 Q. And what does that rule say?</p> <p>15 A. The one that is marked?</p> <p>16 Q. Yeah.</p> <p>17 A. Use a seat belt continuously</p> <p>18 throughout the trip.</p> <p>19 MR. MIDDLEMAS: T. J., let me</p> <p>20 step in for just a second. This has some</p> <p>21 sort of -- two columns down the side of it</p> <p>22 where, I guess, a check mark would be. I</p> <p>23 don't know what Preferred Work Methods</p>
Page 102	Page 104
<p>1 Exhibit 9 was marked for</p> <p>2 identification.)</p> <p>3 A. I don't know.</p> <p>4 Q. Let me get you to look at</p> <p>5 Defendant's Exhibit 9, which is</p> <p>6 acknowledgment and receipt of the safety</p> <p>7 manual.</p> <p>8 A. (Reviewing document.) I don't</p> <p>9 remember it, but apparently I had one.</p> <p>10 Q. I'm sorry, is that your</p> <p>11 signature on Defendant's Exhibit 9?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And that certifies that</p> <p>14 you have received a copy of the Sysco Food</p> <p>15 Services of Central Alabama Safety Manual,</p> <p>16 and that you have read and understood and</p> <p>17 will comply with the policies contained in</p> <p>18 the manual and any revisions made to it.</p> <p>19 And you signed that February 7, 2004; is</p> <p>20 that right?</p> <p>21 A. I guess.</p> <p>22 Q. Had you received a copy of the</p> <p>23 manual and read and understood it at that</p>	<p>1 Delivery Service Associate is. I don't</p> <p>2 know what the document is. I don't know</p> <p>3 what Preferred Work Method means and maybe</p> <p>4 that can be better explained in the</p> <p>5 questioning.</p> <p>6 MR. SEGREST: Sure.</p> <p>7 Q. Well, the document is entitled</p> <p>8 Preferred Work Methods, Delivery Service</p> <p>9 Associate. And one of the rules there is</p> <p>10 that you are to use your seat belt</p> <p>11 continuously throughout the trip. Did you</p> <p>12 understand that was a rule that applied to</p> <p>13 you as the shuttle driver?</p> <p>14 A. Yes.</p> <p>15 Q. You understood that that was a</p> <p>16 company safety rule?</p> <p>17 A. Yes.</p> <p>18 Q. Company policy that you would</p> <p>19 use your seat belt continuously throughout</p> <p>20 the trip?</p> <p>21 A. Yes.</p> <p>22 Q. No question about that?</p> <p>23 A. No question.</p>

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<p>1 Q. And, in fact, John Morris had</p> <p>2 previously given you a verbal warning</p> <p>3 about not wearing your seat belt properly;</p> <p>4 is that right?</p> <p>5 MR. MIDDLEMAS: Object to the</p> <p>6 form of the question.</p> <p>7 Q. When he saw you not wearing</p> <p>8 that shoulder strap earlier?</p> <p>9 A. Yes.</p> <p>10 Q. He told you you had to have</p> <p>11 that shoulder strap on?</p> <p>12 MR. MIDDLEMAS: Objection to</p> <p>13 the form of the question.</p> <p>14 Q. He told you you had to have</p> <p>15 that shoulder strap on, did he not?</p> <p>16 A. Yes.</p> <p>17 Q. Are you aware of any other</p> <p>18 employees at Sysco putting the shoulder</p> <p>19 strap back behind their back?</p> <p>20 A. I don't know.</p> <p>21 Q. Do you know any other Sysco</p> <p>22 employees who did not use their safety</p> <p>23 belts?</p>	<p>1 there under General Safety Rules, policy</p> <p>2 number 414, motor vehicles?</p> <p>3 A. Where?</p> <p>4 MR. MIDDLEMAS: (Indicating.)</p> <p>5 A. Motor vehicles?</p> <p>6 Q. Yes.</p> <p>7 A. Employees, while on company</p> <p>8 business and/or during working hours, are</p> <p>9 required to wear safety belts when</p> <p>10 operating any motor vehicle.</p> <p>11 Q. So you understand it's written</p> <p>12 there as well, in the handbook, as well as</p> <p>13 in the safety manual that you are required</p> <p>14 to wear a seat belt at all times when you</p> <p>15 are operating a vehicle?</p> <p>16 MR. MIDDLEMAS: I'm going to</p> <p>17 object to this line of questioning. The</p> <p>18 plaintiff has testified he was wearing his</p> <p>19 seat belt.</p> <p>20 Q. When was the last time that</p> <p>21 you saw Dr. Goodwiller?</p> <p>22 A. I think it was a couple of</p> <p>23 months ago, but I'm not sure.</p>
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<p>1 A. I don't know.</p> <p>2 Q. Did anybody at Sysco, John</p> <p>3 Morris or anybody else ever tell you it</p> <p>4 was okay not to use your safety belt?</p> <p>5 A. No.</p> <p>6 Q. Did they ever tell you it was</p> <p>7 okay to put your safety belt behind your</p> <p>8 back?</p> <p>9 A. No.</p> <p>10 (Whereupon, Defendant's</p> <p>11 Exhibit 11 was marked for</p> <p>12 identification.)</p> <p>13 Q. I'm going to show you what I</p> <p>14 have marked as Defendant's Exhibit 11,</p> <p>15 which is a document entitled the Employee</p> <p>16 Handbook, 2004 Edition, which, I believe,</p> <p>17 you signed off on as having received in</p> <p>18 Defendant's Exhibit 8. And let me let you</p> <p>19 look at this.</p> <p>20 A. (Reviewing document.)</p> <p>21 Q. And the page I have turned</p> <p>22 back to, I have turned the corner back</p> <p>23 there -- if you would -- what does it say</p>	<p>1 Q. And do you have an appointment</p> <p>2 to see him at any point in the future?</p> <p>3 A. Yes.</p> <p>4 Q. When is your next appointment</p> <p>5 with him?</p> <p>6 A. I would have to look on the</p> <p>7 slip that he gave me.</p> <p>8 Q. It's coming up though?</p> <p>9 A. I'm sorry?</p> <p>10 Q. It's coming up? You have an</p> <p>11 appointment made with him?</p> <p>12 A. Something like every</p> <p>13 six months he sees me or somewhere around</p> <p>14 there. I'm not sure of the exact time.</p> <p>15 Q. He did not refer you to any</p> <p>16 other physician?</p> <p>17 A. No.</p> <p>18 Q. Are you taking any medications</p> <p>19 right now for anything related to this</p> <p>20 accident?</p> <p>21 A. No.</p> <p>22 Q. Any pain medications?</p> <p>23 A. No.</p>



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1 Q. Okay. You mentioned earlier	1 A. They have got several offices.
2 that you take medications for your high	2 I don't know which one they go by.
3 blood pressure and diabetes?	3 Q. Do you go to the same location
4 A. Yes.	4 all the time?
5 Q. Can you tell me what those	5 A. No. I went to two different
6 medications are?	6 offices.
7 A. I would have to look at them.	7 Q. And what are those offices
8 Q. Do you have them handy where	8 located near?
9 you could tell me?	9 A. One is on one side of Panama
10 A. Do I have what?	10 City and the other one is on the other
11 Q. Do you have them handy here?	11 side of Panama City.
12 A. No.	12 Q. Again, is there a major street
13 Q. Do those medications have any	13 you can give me?
14 side effects?	14 A. The only thing I can think of
15 A. The side effects?	15 is Cherry Street, but I'm not sure.
16 Q. Your blood pressure	16 Q. They have two clinics you
17 medication, is it just one medication you	17 said?
18 take?	18 A. I'm sorry?
19 A. I think just two.	19 Q. They have two different
20 Q. Let me ask you this: What	20 clinics?
21 doctor writes those for you?	21 A. More than two, I think.
22 A. What what?	22 Q. And is there a regular doctor
23 Q. What doctor prescribes those	23 there at Prime Care that you see for your
Page 110	Page 112
1 for you?	1 high blood pressure?
2 A. I would have to look at his	2 A. I see most of the time, yes.
3 name, too, because it's over at Prime	3 Once they assign you a doctor, I try to
4 Care.	4 stick with the same one.
5 Q. You have a doctor that manages	5 Q. What is that doctor's name?
6 your high blood pressure for you though?	6 A. The who?
7 You have a doctor that sees you for that?	7 Q. What is that doctor's name?
8 A. Yeah.	8 A. All I can -- his name is -- I
9 Q. Who?	9 think it's John, but I'm not sure. I
10 A. Whoever they assign you at	10 would have to look at the bottle.
11 Prime Care. I would have to look at the	11 Q. You don't know his last name?
12 bottle and see what his name is.	12 A. No, I don't.
13 Q. That is Prime Care?	13 Q. When you make an appointment,
14 A. Prime Care.	14 you don't have to ask to see Dr. so and
15 Q. Is that located in Panama	15 so?
16 City?	16 A. I've got the bottles, so I can
17 A. Yes.	17 say whatever his name is. They also ask
18 Q. What street is that clinic on?	18 me when you call for an appointment who
19 A. What street?	19 you want to see, and I say let me see the
20 Q. Yeah.	20 last one I have seen.
21 A. I don't know.	21 Q. You don't have any idea right
22 Q. Is there a big street that it	22 now what his name is?
23 is near?	23 A. Not right now, I don't.

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1 Q. How many times have you seen  
2 him?  
3 A. Once or twice a year.  
4 Q. Was he prescribing the blood  
5 pressure medication you were taking when  
6 you had this accident?  
7 A. I don't know. I don't think  
8 so.  
9 Q. Did you have another doctor  
10 before him that treated you for high blood  
11 pressure?  
12 A. Yes.  
13 Q. Who was that?  
14 A. Some lady doctor.  
15 Q. You don't know her name?  
16 A. I don't know her name.  
17 Q. Was she at Prime Care as well?  
18 A. Prime Care.  
19 Q. Have you had in the past, say,  
20 ten years any other doctor besides the  
21 Prime Care doctors treating you for high  
22 blood pressure?  
23 A. No.

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1 Q. Who treats you for diabetes?  
2 A. Same people.  
3 Q. Prime Care doctors?  
4 A. Yes.  
5 Q. Has anybody else in the past  
6 ten years been treating you for diabetes  
7 besides Prime Care?  
8 A. No.  
9 Q. Prime Care, is that your  
10 regular family doctor where you go?  
11 A. Yes.  
12 Q. Do you see any other doctors  
13 on a regular basis?  
14 A. I see Prime Care, Goodwillier  
15 and Nanfro, N-A-N-F-R-O.  
16 Q. N-A-N-F-R-O?  
17 A. Yes.  
18 Q. What type of doctor is  
19 Dr. Nanfro?  
20 A. Cancer.  
21 Q. Do you have cancer?  
22 A. I had cancer, yes.  
23 Q. What type of cancer did you

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1 have?  
2 A. Breast.  
3 Q. Have you undergone treatment  
4 for that?  
5 A. Yes.  
6 Q. Did you undergo chemotherapy?  
7 A. Yes.  
8 Q. Radiation?  
9 A. No.  
10 Q. When did you do treatment for  
11 that?  
12 A. This is a year anniversary  
13 now.  
14 Q. And Dr. Nanfro handled your  
15 treatment?  
16 A. He handled the chemo  
17 treatment.  
18 Q. And where is he located?  
19 A. I'm sorry?  
20 Q. Where is Dr. Nanfro located?  
21 A. Panama City.  
22 Q. Did you do your treatments at  
23 a hospital there?

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1 A. No, at his office.  
2 Q. Did you ever have to undergo  
3 any surgery for that?  
4 A. Surgery for cancer, yes.  
5 Q. Where did you undergo that  
6 surgery?  
7 A. I think it was Gulf, but I'm  
8 not sure.  
9 Q. Gulf?  
10 A. Gulf Medical.  
11 MR. MIDDLEMAS: It's Gulf  
12 Coast Hospital.  
13 Q. And what surgeon did that  
14 surgery?  
15 A. Wong.  
16 Q. Dr. Wong. Do you know  
17 Dr. Wong's first name?  
18 A. W-O-N-G.  
19 Q. You don't know his first name  
20 though?  
21 A. Larry.  
22 Q. Any other doctors besides  
23 Nanfro and Wong treat you for cancer?

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<p>1 A. Those are the two doctors.</p> <p>2 Q. Is your cancer in remission</p> <p>3 now?</p> <p>4 A. I hope so.</p> <p>5 Q. How often do you go back for</p> <p>6 checkups?</p> <p>7 A. Every six or eight weeks.</p> <p>8 Q. Are you scheduled for any</p> <p>9 other treatment, chemotherapy or radiation</p> <p>10 or any other type of treatment for your</p> <p>11 cancer?</p> <p>12 A. They have got me on some kind</p> <p>13 of pills now for the treatment, and I</p> <p>14 still have the port in me where they do</p> <p>15 the chemo. So that has got to get flushed</p> <p>16 every six or eight weeks or something like</p> <p>17 that.</p> <p>18 Q. Okay. Do you know what type</p> <p>19 of pills you are taking for that, what the</p> <p>20 name of it is?</p> <p>21 A. The only one I can remember</p> <p>22 for cancer is Warfarin. I don't remember</p> <p>23 what the other one is.</p>	<p>1 shoulder in any way?</p> <p>2 A. No.</p> <p>3 Q. Did you play sports in high</p> <p>4 school?</p> <p>5 A. No.</p> <p>6 Q. Had you ever in your life</p> <p>7 before this accident ever had a</p> <p>8 work-related accident of any kind?</p> <p>9 A. No.</p> <p>10 Q. And you did receive benefits</p> <p>11 after this accident from worker's comp; is</p> <p>12 that right?</p> <p>13 A. Yes.</p> <p>14 Q. And your understanding was</p> <p>15 that it was a Florida worker's comp claim,</p> <p>16 you got it under Florida worker's comp?</p> <p>17 A. I think so. I'm not sure.</p> <p>18 Q. To your knowledge, have you</p> <p>19 received any benefits whatsoever under</p> <p>20 Alabama worker's comp?</p> <p>21 A. I don't know.</p> <p>22 Q. You just got the regular</p> <p>23 check?</p>
Page 118	Page 120
<p>1 Q. Besides your blood pressure</p> <p>2 medicine, your diabetes medicine and your</p> <p>3 cancer medicine, are you taking any other</p> <p>4 medicine currently?</p> <p>5 A. If my gout flares up, I have</p> <p>6 gout medicine for that.</p> <p>7 Q. Gout?</p> <p>8 A. Gout.</p> <p>9 Q. What type of medicine do you</p> <p>10 take for that?</p> <p>11 A. I think it's called Endomycin,</p> <p>12 but I'm not sure.</p> <p>13 Q. What doctor prescribes that</p> <p>14 for you?</p> <p>15 A. The same one for the blood</p> <p>16 pressure and --</p> <p>17 Q. Prime Med doc?</p> <p>18 A. Prime Care.</p> <p>19 Q. Okay. Before this accident,</p> <p>20 had you ever had any pain or any problems</p> <p>21 with your left shoulder before?</p> <p>22 A. No.</p> <p>23 Q. Had you ever injured your left</p>	<p>1 A. I just got the check from the</p> <p>2 workmen's comp people.</p> <p>3 Q. You haven't received any other</p> <p>4 compensation outside of that regular</p> <p>5 weekly check that you got?</p> <p>6 A. Right. Correct.</p> <p>7 Q. All right. Prior to this</p> <p>8 accident, and I understand you have told</p> <p>9 me about your diabetes and high blood</p> <p>10 pressure, had you had any serious</p> <p>11 illnesses?</p> <p>12 A. No.</p> <p>13 Q. Have you ever been</p> <p>14 hospitalized before this accident?</p> <p>15 A. No.</p> <p>16 Q. Have you ever had any broken</p> <p>17 bones before this accident?</p> <p>18 A. No.</p> <p>19 Q. Have you ever been involved in</p> <p>20 a car accident or a truck driving accident</p> <p>21 before this one in which you sustained any</p> <p>22 type of injuries at all?</p> <p>23 A. No.</p>

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1 Q. You were never hurt in a car  
2 accident before this?  
3 A. No.  
4 Q. Since this accident, have you  
5 had any other car accidents of any kind?  
6 A. No.  
7 Q. Have you ever had any other  
8 accidents, period, of any kind at all?  
9 A. No.  
10 Q. And your diagnosis of cancer  
11 was made after this accident happened?  
12 A. Yes.  
13 Q. Is that correct? Have you  
14 been diagnosed with any other serious  
15 illnesses besides that since this  
16 accident?  
17 A. No.  
18 Q. Tell me what problems -- and  
19 by problems, I mean, pain, limited motion,  
20 any symptoms you are having today  
21 currently that you claim are a result of  
22 this accident.  
23 A. I can't use my left shoulder

1 at all?  
2 A. No.  
3 Q. Does the pain go to any other  
4 part of your body besides the left  
5 shoulder?  
6 A. The left shoulder is the part  
7 that is hurting all the time. And when  
8 you asked about the back, my back hurts,  
9 but I don't know if that is related to  
10 this shoulder.  
11 Q. Had you ever had back pain  
12 before this accident?  
13 A. Yes.  
14 Q. Is that the same back pain you  
15 have now?  
16 A. No. Now, I can't even twist.  
17 Q. Are you making a claim for any  
18 injury to your back arising out of this  
19 accident?  
20 A. No.  
21 Q. So when you say now, you can't  
22 even twist, that is not something you  
23 attribute to this accident; is that

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1 like I used to. I can barely lift up the  
2 gallon of milk into the refrigerator. I  
3 lost all of my strength on my left side.  
4 There is a constant pain in it and it's  
5 very low, but after a while you just get  
6 used to it. And if you try to do  
7 something, the harder it is to do it, the  
8 more it starts to hurt. And the most -- I  
9 can do something, whatever I wanted to do,  
10 the most I can stand is 15 minutes and  
11 I've got to stop.  
12 Q. And this is all because of  
13 pain and problems in your left shoulder?  
14 A. Yes.  
15 Q. Does that pain extend down  
16 your arm at all?  
17 A. No, I don't think so.  
18 Q. Just in the left shoulder?  
19 A. Yes.  
20 Q. Does it extend back up towards  
21 your neck at all?  
22 A. No.  
23 Q. Does it extend into your back

1 correct?  
2 A. Before the accident, I didn't  
3 have any problems with it. It's kind of  
4 hard to say, but I can't even wipe myself.  
5 I had to make myself a bidet so I can go  
6 do that now. So whatever happened after  
7 the accident, I can't even do that now.  
8 Q. Is that because of your left  
9 shoulder?  
10 A. My back doesn't twist. I  
11 can't get back there anymore, so I had to  
12 make myself a homemade bidet.  
13 Q. Is the fact that your back  
14 can't twist, is that something that you  
15 allege resulted from your accident?  
16 A. I don't know.  
17 Q. Well, has any doctor told you  
18 it's related to your accident?  
19 A. No.  
20 Q. Has any doctor told you your  
21 inability to twist is related to your  
22 accident?  
23 A. No.

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1 Q. Have you received any  
2 treatment from a doctor for your inability  
3 to twist?

4 A. No.

5 Q. Have you made any request from  
6 Sysco or their workmen's compensation  
7 insurance carrier for your back being  
8 unable to twist?

9 A. No, I don't think we did.

10 Q. Besides the stuff we have  
11 already talked about, is there any other  
12 problem that you are having with any other  
13 part of your body that you attribute to  
14 this accident?

15 A. I don't believe so.

16 Q. What is the current typical  
17 day for you? What do you do when you get  
18 up in the morning?

19 A. I sit and listen to the radio  
20 or watch a little TV, read whatever I can  
21 on the computer, read books.

22 Q. Are you currently able to  
23 drive?

1 income?

2 A. Yes.

3 Q. What income does she have?

4 A. I don't know. That is her  
5 business.

6 Q. She doesn't work?

7 A. No.

8 Q. Does she receive Social  
9 Security benefits?

10 A. Huh?

11 Q. Does she receive Social  
12 Security benefits?

13 A. I don't know.

14 Q. You haven't asked your fiancée  
15 what her source of income is?

16 A. No.

17 Q. These are some standard  
18 questions I ask everybody. I don't want  
19 you to think I'm implying anything. Have  
20 you ever been arrested for anything?

21 A. No.

22 Q. Have you ever received any  
23 psychiatric treatment of any kind?

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1 A. I'm sorry?

2 Q. Do you drive currently?

3 A. Very little.

4 Q. Has any doctor restricted you  
5 from driving?

6 A. No.

7 Q. Do you do any housework?

8 A. Very little.

9 Q. Do you do any yard work?

10 A. Very little.

11 Q. Does your fiancée do the  
12 housework?

13 A. Yes.

14 Q. Does she work?

15 A. No.

16 Q. Other than your Social  
17 Security disability benefits, what other  
18 sources of income do you have currently?

19 A. That is it.

20 Q. That is all. Does your  
21 fiancée have any income?

22 A. I'm sorry?

23 Q. Does your fiancée have any

1 A. No.

2 Q. Have you ever been treated for  
3 drug or alcohol addiction of any kind?

4 A. No.

5 Q. Did you have a policy of  
6 health insurance through your employment  
7 with Sysco?

8 A. Did I have what?

9 Q. Did you have health insurance  
10 through your employment with Sysco?

11 A. Yes.

12 Q. Did you have any other type of  
13 insurance such as life insurance or  
14 disability insurance?

15 A. I think I did.

16 Q. Did you have life insurance --

17 A. Through Sysco.

18 Q. Did you have life insurance  
19 through Sysco?

20 A. I believe so.

21 Q. Did you have disability  
22 insurance?

23 A. I thought so.



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1 Q. Did you receive any disability  
2 benefits following this accident?

3 A. No.

4 Q. Have you been seen by a  
5 chiropractor at any time?

6 A. No.

7 Q. And have you suffered any  
8 accident or injury of any kind since this  
9 accident occurred?

10 A. Have I what?

11 Q. Have you suffered any accident  
12 or injury --

13 A. No.

14 Q. -- of any kind since this  
15 accident happened?

16 A. Not since this accident, no.

17 Q. Where do you get your  
18 prescriptions filled?

19 A. There is a program on the  
20 Internet that I found where when you only  
21 make so much money, you can send it in. I  
22 don't know. I would have to look at the  
23 paper again. That is now. But back then,

1 A. No.

2 Q. And other than the Bay Walk-In  
3 Clinic and Dr. Goodwill and, of course,  
4 the emergency room here in Montgomery, has  
5 any other doctor treated you for this  
6 accident, for any other injuries sustained  
7 in this accident at all?

8 A. No.

9 Q. Did you have any neck pain at  
10 all following this accident?

11 A. No.

12 Q. Are there any other effects of  
13 this accident we haven't talked about?

14 A. Any what?

15 Q. Any other effects of this  
16 accident? Has this accident affected you  
17 in any way that we haven't talked about?

18 A. My nightmares about this  
19 accident, I get them all the time. They  
20 even got so bad to the point where I would  
21 be just sitting at a table and all of a  
22 sudden having flashbacks of going into the  
23 ditch and all.

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1 is that when you wanted?

2 Q. Well, let me ask you this: At  
3 some point, were you prescribed some pain  
4 medication?

5 A. Either K Mart or CVS.

6 Q. And is that where you would  
7 get your prescriptions filled?

8 A. Yes.

9 Q. All of your prescriptions back  
10 then?

11 A. Yes.

12 Q. How long have you been doing  
13 the Internet program?

14 A. This other program I have  
15 mentioned, it's been about six months now.

16 Q. Have you had any treatment for  
17 any mental condition at all following this  
18 accident?

19 A. No.

20 Q. Are you making any claim in  
21 this case for any mental or psychiatric or  
22 psychological injury or condition arising  
23 out of this accident?

1 Q. Have you had any treatment  
2 from any doctor for that?

3 A. No.

4 Q. Have you requested any  
5 treatment for that?

6 A. Yes.

7 Q. From who?

8 A. Well, we asked workmen's comp.

9 Q. Who did you ask?

10 A. Just called it in and asked  
11 for it to be treated by workmen's comp. I  
12 don't know who it was.

13 Q. Did you make that request or  
14 did your attorney make that request?

15 A. I don't remember if my sister  
16 called it in or if I did.

17 Q. When did you make the request?

18 A. The same year, I think.

19 Q. I'm sorry?

20 A. The same year that the  
21 accident happened.

22 Q. Within a year of the accident?

23 A. Yeah.

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1 Q. In 2004?  
2 A. 2004, I believe.  
3 Q. Is that a problem you are  
4 having currently?  
5 A. I'm sorry?  
6 Q. Are you having a problem with  
7 nightmares currently?  
8 A. I have them all the time.  
9 Q. Have any of your doctors at  
10 Prime Care treated you for that at all?  
11 A. For any --  
12 Q. For your nightmares?  
13 A. No.  
14 Q. Have you discussed that with  
15 them at all?  
16 A. Just at home.  
17 Q. Is this something that wakes  
18 you up at night?  
19 A. Yes.  
20 Q. Does it affect you during the  
21 day while you are awake as well?  
22 A. It's even worse in the  
23 daytime.

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1 Q. And you are not aware of any  
2 witnesses to this accident?  
3 A. I don't know.  
4 Q. Do you know if anybody saw it  
5 happen or not?  
6 A. I have no clue.  
7 Q. The person who came to your  
8 window, you didn't ask them did they see  
9 this happen?  
10 A. I was too much in shock.  
11 Q. Has workmen's comp, Sysco or  
12 their worker's comp carrier paid for your  
13 treatment for this accident with  
14 Dr. Goodwiller and with Bay Walk-In?  
15 A. I think so.  
16 MR. SEGREST: Let me take a  
17 break real quick.  
18 (Short break taken.)  
19 Q. (BY MR. SEGREST:)  
20 Mr. Fischer, when did you begin receiving  
21 Social Security benefits?  
22 A. It was awarded to me right  
23 at -- from the time of the accident.

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1 Q. How soon after the accident?  
2 A. It was two years after.  
3 Q. You filed two years after the  
4 accident?  
5 A. No, it took two years before I  
6 got approved.  
7 Q. Okay. How soon after the  
8 accident did you file for Social Security?  
9 A. I think right away. I don't  
10 know exact time though.  
11 Q. And then it took roughly two  
12 years for that to be approved?  
13 A. Yes.  
14 Q. And when did you actually  
15 begin receiving Social Security benefits?  
16 A. I think this year.  
17 Q. And in addition to the monthly  
18 benefits you get, were you also given a  
19 lump sum for back benefits?  
20 A. For back pay, yes, sir.  
21 Q. How much was that?  
22 A. I don't remember.  
23 Q. Do you have any estimate at

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1 all?  
2 A. I'm sorry?  
3 Q. Do you have any estimate at  
4 all as to how much it was?  
5 A. No, I wouldn't know.  
6 MR. SEGREST: Davis, I'm not  
7 sure if we have already given y'all a  
8 release or not. I know we have got a  
9 request in our written discovery for any  
10 Social Security records. Can you make  
11 sure you get us what he's got?  
12 MR. MIDDLEMAS: Yeah.  
13 MR. SEGREST: The main thing  
14 would be the award letter showing the date  
15 of disability and all that.  
16 MR. MIDDLEMAS: Sure.  
17 MR. SEGREST: And also any of  
18 the documents you have got, the entire  
19 file, if possible.  
20 MR. MIDDLEMAS: Sure.  
21 Q. (BY MR. SEGREST:) On what  
22 basis were those benefits awarded? On  
23 what condition did you file for those



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<p>1 benefits?</p> <p>2 A. Because of the shoulder and</p> <p>3 also the cancer, but the Judge said it</p> <p>4 was -- that I was disabled from the time</p> <p>5 of the accident.</p> <p>6 Q. They dated your disability</p> <p>7 back to the accident?</p> <p>8 A. Yes.</p> <p>9 Q. And do you know if the award</p> <p>10 was made based on the shoulder, or was it</p> <p>11 based on the shoulder and the cancer?</p> <p>12 A. I don't know. I would have to</p> <p>13 look at the letter.</p> <p>14 Q. Do you have a copy of that</p> <p>15 letter?</p> <p>16 A. Not on me, no.</p> <p>17 Q. Do you have a copy that you</p> <p>18 can give to Mr. Middlemas?</p> <p>19 MR. MIDDLEMAS: He can get it</p> <p>20 to me and I'll give it to you.</p> <p>21 Q. How did you find out that you</p> <p>22 had breast cancer?</p> <p>23 A. How did I --</p>	<p>1 Q. Do you have any of your</p> <p>2 prescription bottles with you here in town</p> <p>3 like today in your car that you could look</p> <p>4 at and tell us?</p> <p>5 A. No.</p> <p>6 MR. SEGREST: And we have got</p> <p>7 a discovery request for all docs that he</p> <p>8 has seen, if you can make sure that is</p> <p>9 complete.</p> <p>10 MR. MIDDLEMAS: Sure, I will.</p> <p>11 MR. SEGREST: That is all the</p> <p>12 questions I have for now. Mr. Umbach is</p> <p>13 going to ask you some questions as well,</p> <p>14 and I'll go ahead and let him do that.</p> <p>15</p> <p>16 EXAMINATION BY MR. UMBACH:</p> <p>17 Q. Mr. Fischer, my name is Tripp</p> <p>18 Umbach and I represent Sysco for purposes</p> <p>19 of the claims you have made relating to</p> <p>20 your termination. And, as I understand</p> <p>21 it, you are claiming that you were</p> <p>22 terminated because of your age; is that</p> <p>23 correct?</p>
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<p>1 Q. How was your breast cancer</p> <p>2 discovered?</p> <p>3 A. There was a lump.</p> <p>4 Q. Did you find that lump</p> <p>5 yourself?</p> <p>6 A. Yeah. Me and my fiancée did,</p> <p>7 yeah.</p> <p>8 Q. When did you find that lump?</p> <p>9 A. About a year ago.</p> <p>10 Q. It wasn't a doctor that</p> <p>11 discovered it?</p> <p>12 A. No.</p> <p>13 Q. You found it yourself?</p> <p>14 A. Yeah.</p> <p>15 Q. And what doctor did you</p> <p>16 initially go to because of that lump?</p> <p>17 A. The one at Prime Care.</p> <p>18 Q. Was it the male or female</p> <p>19 there?</p> <p>20 A. Male.</p> <p>21 Q. You don't remember his name?</p> <p>22 A. I think his name is John, but</p> <p>23 I can't remember what his last name is.</p>	<p>1 A. Yes.</p> <p>2 Q. And that you were terminated</p> <p>3 because you made a worker's comp claim; is</p> <p>4 that right?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Let me start by asking</p> <p>7 this: Why do you believe you were</p> <p>8 terminated because of your age?</p> <p>9 A. The frequency about how long I</p> <p>10 have been with the company was brought up</p> <p>11 more and more at meetings that we were</p> <p>12 having. And even a few times, I have had</p> <p>13 a company supervisor tell me that I should</p> <p>14 look up or look into retirement benefits</p> <p>15 hinting that -- hinting to me that I</p> <p>16 should retire. And I said -- I told him</p> <p>17 no, I said I wanted to spend another</p> <p>18 fifteen years with the company.</p> <p>19 But it seems like every time we</p> <p>20 had a safety meeting, how long have you</p> <p>21 been with the company, asking me all of</p> <p>22 these questions about my time with the</p> <p>23 company and you are ready to retire, you</p>

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1 can retire now.  
2 Q. Okay. Any other reason you  
3 think you were terminated because of your  
4 age?  
5 A. Any other reasons?  
6 Q. Right.  
7 A. I can't think of any right  
8 now.  
9 Q. Why do you think you were  
10 terminated because of your worker's comp  
11 claim?  
12 A. It happened right away. Right  
13 after I told John Morris that I had to go  
14 in for an operation, he said you are  
15 kidding. And then the fact that they  
16 terminated me two days before my  
17 operation.  
18 Q. Okay. Any other reason you  
19 think you were terminated because of your  
20 worker's comp claim?  
21 A. None that I can think of right  
22 now.  
23 Q. All right. You said company

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1 supervisors had hinted to you about  
2 retirement. Which company supervisors are  
3 you talking about?  
4 A. One that really upset me was  
5 Dee Dunagan.  
6 Q. Any other supervisors?  
7 A. There was -- who is the one  
8 that always goes with Eddie McConnell all  
9 the time?  
10 Q. Why don't you describe the  
11 person to me.  
12 A. They usually go for -- I can't  
13 remember their names anymore.  
14 Q. Is it Doug Verteen?  
15 A. No.  
16 Q. Is it Danny Harpst?  
17 A. No.  
18 Q. Smoky Robinson -- Smoky  
19 Parker?  
20 A. It may be Smoky Parker. In  
21 fact, you even mentioned something about  
22 it at one of the benefit meetings.  
23 MR. MIDDLEMAS: Just answer

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1 his questions.  
2 THE WITNESS: I'm sorry?  
3 MR. MIDDLEMAS: Just answer  
4 his questions.  
5 Q. Who mentioned what at a  
6 benefit meeting?  
7 A. Lynda.  
8 Q. Lynda Wheat, right?  
9 A. (Witness nods head.)  
10 Q. You are nodding your head yes?  
11 A. Yes.  
12 Q. So when you testified earlier  
13 that there were supervisors who had said  
14 something about retirement or had hinted  
15 about retirement, we are talking about  
16 Dunagan, maybe Parker and Wheat?  
17 A. Right.  
18 Q. Any others?  
19 A. Not that I can think of right  
20 now.  
21 Q. Okay. And you said Dunagan is  
22 the one that really upset you?  
23 A. Yeah.

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1 Q. All right. What did Dunagan  
2 say that really upset you?  
3 A. He said that I should -- that  
4 the company has good retirement benefits,  
5 I should investigate it and I've got  
6 enough time in with the company that I  
7 could retire.  
8 Q. Anything else Dunagan said?  
9 A. That is all I can remember.  
10 Q. Was that on one occasion that  
11 she said these things or more than one?  
12 A. I think it's just that one.  
13 Q. Okay. What was it about her  
14 statements that really upset you?  
15 A. It's like it felt like they  
16 were hoping that I would retire or leave  
17 because of my age.  
18 Q. Anything else about what she  
19 said that really upset you?  
20 A. Well, I was at the point where  
21 I was receiving double bonuses if we had  
22 safe driving. And I'm also getting -- I  
23 thought that -- it felt like, too, because

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1 of my seniority, I was getting all these  
2 benefits that they wanted to -- oh, and I  
3 also had four weeks of vacation. The  
4 vacation was getting harder and harder to  
5 pick, even though I was the senior driver.  
6 Q. All right. Let's stick with  
7 what Dunagan said to you first. When did  
8 you have this discussion with Dee Dunagan  
9 about the company's retirement?  
10 A. I don't remember the time.  
11 Q. You don't remember the time?  
12 A. Uh-uh.  
13 Q. Was it during the time that  
14 she was your supervisor?  
15 A. Yes.  
16 Q. Okay. Now, at the time of  
17 your termination from Sysco, was Dunagan  
18 your supervisor?  
19 A. No.  
20 Q. Was she still employed with  
21 the company?  
22 A. I think so.  
23 Q. In what capacity?

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1 A. I think she was just a driver.  
2 Q. Like you?  
3 A. Yeah.  
4 Q. The conversation that you had  
5 with Dunagan about retirement, where did  
6 it take place?  
7 A. I think it was at one of the  
8 safety meetings.  
9 Q. How long did you have safety  
10 meetings?  
11 A. I believe it was like once a  
12 quarter.  
13 Q. Where did you have them?  
14 A. Sometimes it would be at the  
15 office and sometimes it would be at Calera  
16 and sometimes it would be at a restaurant.  
17 Q. Okay. Do you remember where  
18 this one took place?  
19 A. No, I don't.  
20 Q. It could have been in Calera?  
21 A. It could have been. I don't  
22 know.  
23 Q. It could have been --

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1 A. At the office.  
2 Q. Is that Panama City?  
3 A. In Panama City, right.  
4 Q. Or it could have been at some  
5 restaurant?  
6 A. It could have been.  
7 Q. Okay. Anyone else present  
8 when you had this conversation with  
9 Dunagan about retirement?  
10 A. No.  
11 Q. No?  
12 A. No.  
13 Q. Were the safety meetings one  
14 on one?  
15 A. No. I would get there before  
16 other people would show up and start  
17 talking to me about stuff.  
18 Q. So your recollection is that  
19 your conversation with Dunagan about  
20 retirement took place just before a safety  
21 meeting?  
22 A. Yes.  
23 Q. And it was just the two of

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1 you?  
2 A. Yes. There wasn't anybody  
3 around.  
4 Q. No one else around to hear it?  
5 A. Not that I know of.  
6 Q. Okay. Did you make any  
7 response to her when she asked you about  
8 retirement?  
9 A. I just said I couldn't retire  
10 now, that I wanted to keep on working.  
11 Q. Do you have any idea what  
12 Dunagan's age is?  
13 A. No.  
14 Q. Did you make any notes of this  
15 conversation with Dunagan?  
16 A. No, I didn't.  
17 Q. You didn't tape record it?  
18 A. No.  
19 Q. Do you recall whether at the  
20 time of this discussion with Dunagan there  
21 had been any change to the company's  
22 retirement benefits?  
23 A. I don't remember.

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<p>1 Q. Did you get information from</p> <p>2 time to time about the company's</p> <p>3 retirement benefits?</p> <p>4 A. Yes.</p> <p>5 Q. Do you recall the nature of</p> <p>6 the information that you got?</p> <p>7 A. The retirement benefits</p> <p>8 pension plan, how much -- I think it's</p> <p>9 every year they show you how much you have</p> <p>10 got in it and how much you have vested for</p> <p>11 it.</p> <p>12 Q. You got that every year?</p> <p>13 A. I believe it was every year.</p> <p>14 Q. And did that explain to you</p> <p>15 when you could retire and what amount of</p> <p>16 benefits you would get if you did?</p> <p>17 A. I never saw it as that way. I</p> <p>18 only saw it as how much I have in my</p> <p>19 pension plan. And I didn't realize I</p> <p>20 bought -- I don't think I realized that</p> <p>21 much about it when I could retire.</p> <p>22 Q. Okay. What did you understand</p> <p>23 about when you could have retired, if you</p>	<p>1 them almost 26 years -- well, you have got</p> <p>2 enough years in to retire, and I said I've</p> <p>3 got to last another fifteen years.</p> <p>4 Q. Who do you recall asked you</p> <p>5 how long you have been with the company</p> <p>6 and told you you have got enough time to</p> <p>7 retire?</p> <p>8 A. I'm sorry?</p> <p>9 Q. Who said those things to you,</p> <p>10 asking you how long you have been with the</p> <p>11 company and telling you that you have been</p> <p>12 there long enough to retire? Were these</p> <p>13 other drivers?</p> <p>14 A. No. It was the supervisors.</p> <p>15 Q. Okay. All right. And you</p> <p>16 have told me about Dunagan?</p> <p>17 A. I'm sure about Dunagan, yes.</p> <p>18 Q. Anything else Dunagan said to</p> <p>19 you about retirement that you haven't told</p> <p>20 me about?</p> <p>21 A. Not that I recall. All I</p> <p>22 remember is for certain that I was very</p> <p>23 upset when the meeting was over with. And</p>
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<p>1 had wanted to from Sysco?</p> <p>2 A. That I had to be something</p> <p>3 like in your late 50s, that is -- and then</p> <p>4 that is all I can remember about that.</p> <p>5 Q. When did you plan to retire,</p> <p>6 if you did?</p> <p>7 A. I was hoping to make it</p> <p>8 another fifteen years.</p> <p>9 Q. Which would have made you how</p> <p>10 old?</p> <p>11 A. 65, I think.</p> <p>12 Q. Did you talk to anyone at</p> <p>13 Sysco about your plans for retirement?</p> <p>14 A. Yes.</p> <p>15 Q. Who?</p> <p>16 A. Everyone at the meeting. They</p> <p>17 keep asking me how long I have been with</p> <p>18 the company and I say well, I'm hoping to</p> <p>19 last another fifteen years.</p> <p>20 Q. Okay. And who asked you that?</p> <p>21 A. Well, if you walk into the</p> <p>22 meeting early, they say how long have you</p> <p>23 been with the company and I would tell</p>	<p>1 I came home and I said there is something</p> <p>2 going on that they are trying to get rid</p> <p>3 of me.</p> <p>4 Q. Who did you say that to?</p> <p>5 A. My sister.</p> <p>6 Q. What is your sister's name?</p> <p>7 A. Margaret Loberger.</p> <p>8 Q. I noticed there is somebody</p> <p>9 down in the lobby with you today. Is that</p> <p>10 your sister?</p> <p>11 A. No, that is my fiancée.</p> <p>12 Q. And when you came home and</p> <p>13 made this statement to Ms. Loberger, that</p> <p>14 was after your conversation with Dee</p> <p>15 Dunagan?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Did you live with your</p> <p>18 sister?</p> <p>19 A. Yes.</p> <p>20 Q. When did you live with your</p> <p>21 sister?</p> <p>22 A. All the while I was working</p> <p>23 for Sysco.</p>

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1 Q. Even in Wisconsin?  
2 A. Huh?  
3 Q. Even in Wisconsin?  
4 A. Wisconsin, some of the time  
5 with my sister and sometimes by myself.  
6 Q. But the whole time you have  
7 lived in Florida, you have lived with your  
8 sister?  
9 A. Yes.  
10 Q. Until when?  
11 A. Until 2005, I think, 2004,  
12 2005.  
13 Q. Okay. Is that when you became  
14 engaged?  
15 A. Yes.  
16 Q. Were you engaged to be married  
17 before your termination from Sysco?  
18 A. I think I was asking her. And  
19 I don't know if she was saying okay or  
20 not.  
21 Q. You didn't have to ask her  
22 more than once?  
23 A. Yeah, I did.

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1 Q. Have you set a date to get  
2 married?  
3 A. I'm hoping for October.  
4 Q. Are you still asking her about  
5 that?  
6 A. I don't know.  
7 Q. I'm sorry, I'm picking at you.  
8 All right. What other  
9 supervisors or managers at Sysco have  
10 talked to you about your time with the  
11 company or retirement?  
12 A. You mean just like any  
13 comments about my retirement or what?  
14 Q. Well, let me back up. I  
15 started out by asking you why you thought  
16 you were terminated because of your age.  
17 A. Yes.  
18 Q. And you mentioned that some  
19 supervisors --  
20 A. Right.  
21 Q. -- had asked you about  
22 retirement?  
23 A. Right.

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1 Q. That is where I am coming  
2 from.  
3 A. Okay. Well, like at a safety  
4 meeting, whatever we had, I would come in  
5 early and they would go hey, small talk,  
6 hi, how are you doing, how long have you  
7 been with the company now. They would ask  
8 me how long I had been with the company  
9 now. I would tell them twenty-six or  
10 twenty-five years. And I don't know, it  
11 was almost like they were joking with me,  
12 but it seemed like more and more at these  
13 safety meetings they kept asking me about  
14 how long have you been with the company,  
15 how long have you been with the company  
16 and, you know --  
17 Q. Okay. Who? What supervisor?  
18 A. Eddie O'Conner asked me that.  
19 I think smoky Robinson or Smoky -- what is  
20 his name?  
21 Q. Smoky Parker.  
22 A. Parker. Like I said, Dee and  
23 them. I don't know if John Morris said

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1 anything about it or not. I can't  
2 remember about him.  
3 Q. What do you remember  
4 specifically Eddie O'Conner saying to you?  
5 A. Just like small talk if I  
6 would come into a meeting.  
7 Q. He would say how long have you  
8 been with the company?  
9 A. Hi, Frank, how are you doing,  
10 how long have you been with the company  
11 now.  
12 Q. And what response did you  
13 make?  
14 A. I would tell him how many  
15 years I've been with the company. Are you  
16 ready to retire? You can retire now.  
17 Q. Did O'Conner use the word  
18 "retire"?  
19 A. I don't remember.  
20 Q. Let's focus on O'Conner.  
21 A. Okay.  
22 Q. I understand you to say that  
23 O'Conner asked you how long you have been



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1 with the company?  
2 A. Uh-huh.  
3 Q. You are sure of that?  
4 A. Yes.  
5 Q. Did he use the word  
6 "retirement"?  
7 A. I think he did.  
8 Q. But you are not sure?  
9 A. I'm not sure, yes.  
10 Q. When did this conversation  
11 take place?  
12 A. One of the meetings that we  
13 had.  
14 Q. Safety meeting?  
15 A. Yeah.  
16 Q. Where was it?  
17 A. It either could have been at  
18 the -- I think it was at one of the  
19 restaurants we had.  
20 Q. Do you remember when it was?  
21 A. At a restaurant.  
22 Q. When?  
23 A. I don't remember the time.

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1 Q. When was it in relation to  
2 your termination?  
3 A. It was before that.  
4 Q. I understand that. But how  
5 long before?  
6 A. Three months maybe.  
7 Q. Okay. Do you remember anyone  
8 else that was present?  
9 A. Like I said, you come in early  
10 and they start talking to you.  
11 Q. Do you remember anyone else  
12 that was present?  
13 A. No, I don't.  
14 Q. Okay. Any other conversations  
15 you had with O'Conner about how long you  
16 had been with the company?  
17 A. Just small talk, that is all I  
18 remember, where you would come in and  
19 quite -- you know, it wasn't like a  
20 serious talk or anything, just like small  
21 talk. Hey, how are you doing, how long  
22 have you been with the company now, stuff  
23 like that.

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1 Q. Did what O'Conner say to  
2 you -- did what he said to you offend you?  
3 A. No.  
4 Q. Did you complain to anyone  
5 about what O'Conner said?  
6 A. No.  
7 Q. Did you complain to anyone  
8 about what Dee Dunagan said?  
9 A. Just at home.  
10 Q. Just to your sister?  
11 A. (Witness nods head.)  
12 Q. Right?  
13 A. Right.  
14 Q. All right. What do you  
15 remember Smoky Parker saying, if anything?  
16 A. Same thing.  
17 Q. Same thing as O'Conner?  
18 A. Just like small talk.  
19 Q. Asked you how long have you  
20 been with the company?  
21 A. Yeah.  
22 Q. Do you remember him, Smoky  
23 Parker, using the word "retirement"?

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1 A. No.  
2 Q. Were you offended by what  
3 Parker said?  
4 A. No.  
5 Q. Did you complain to anybody  
6 about what Parker said?  
7 A. No.  
8 Q. What other supervisors do you  
9 remember saying something to you about  
10 your time with the company and possibly  
11 retirement?  
12 A. That is all I can remember as  
13 far as names are concerned.  
14 Q. What?  
15 A. That is all I can remember as  
16 far as names are concerned about who asked  
17 me.  
18 Q. Now, you mentioned Lynda  
19 Wheat's name earlier?  
20 A. Oh, yes, sir.  
21 Q. Do you remember her saying  
22 something to you about --  
23 A. Yeah, at one of the benefit

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1 meetings that we had at the some motel we  
2 went to in Panama City. She would go  
3 through all my benefits.  
4 Q. Was this a one-on-one  
5 conversation or were there others?  
6 A. Yes, nobody was there yet.  
7 The younger lady went outside to smoke.  
8 And she would show me how long -- what my  
9 benefits are and how long I have been with  
10 the company and that I could retire, if I  
11 wanted to.  
12 Q. Do you know if Ms. Wheat was  
13 down in Panama City to have conversations  
14 like that with all the drivers?  
15 A. I don't know.  
16 Q. Do you know if her reason for  
17 being there was to go over benefits with  
18 employees?  
19 A. With employees, yes.  
20 Q. Was that a helpful thing to  
21 you to know what your benefits were?  
22 A. Yeah.  
23 Q. Did you appreciate being told

1 Q. Has any supervisor ever said  
2 anything that you are aware of that you  
3 think is derogatory about a person's age?  
4 A. Not that I am aware of.  
5 Q. Or that, you know, might  
6 offend somebody who is a certain age?  
7 A. Not that I am aware of.  
8 Q. Did you ever hear Jim -- John  
9 Morris say anything that you thought  
10 was --  
11 A. I can't remember if he ever  
12 did or not.  
13 Q. Well, do you have any reason  
14 to think that John Morris has got a  
15 problem with older employees?  
16 A. I don't know.  
17 Q. Is there anybody, any  
18 supervisor or manager at Sysco, that you  
19 think has a problem with older employees?  
20 A. I don't know.  
21 Q. Tell me about this  
22 conversation that you had with John Morris  
23 about needing surgery.

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1 when you could retire, if you wanted to?  
2 A. Did I appreciate it?  
3 Q. Did you find that helpful?  
4 A. Well, it was helpful maybe.  
5 Q. Good information to know?  
6 A. I guess so.  
7 Q. Were you offended by what Ms.  
8 Wheat said to you?  
9 A. No.  
10 Q. Did you complain to anyone  
11 about what she said to you?  
12 A. No.  
13 Q. Are there any other  
14 supervisors at Sysco who you can recall  
15 saying anything to you about your service  
16 with the company or retirement?  
17 A. No.  
18 Q. Is there any other supervisor  
19 that said anything to you that you found  
20 offensive?  
21 A. That you what?  
22 Q. You found offensive?  
23 A. No.

1 A. I called him up and told him  
2 that the doctor said I had to have surgery  
3 on my shoulder, and he acted surprised and  
4 he said you are kidding. And I said no,  
5 I'm hurt.  
6 Q. Anything else you recall that  
7 you said or that he said?  
8 A. That is just that -- I  
9 remember that he was surprised, and that I  
10 just told him that I had to have the  
11 surgery.  
12 Q. Okay. And I take it this  
13 would have been within a few days of your  
14 accident?  
15 A. Right.  
16 Q. And it was a phone  
17 conversation?  
18 A. Yes.  
19 Q. And when you say he acted  
20 surprised, you base that on the fact that  
21 he said you are kidding?  
22 A. Yes.  
23 Q. All right. Who informed you

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1 that you were being terminated from Sysco?  
2 A. I don't know his name.  
3 Q. Was it one person or more than  
4 one person?  
5 A. It was him that informed me.  
6 The guy that informed me is the same one  
7 that drove me to Troy. I don't remember  
8 his name. John Morris was there.  
9 Q. If I told you his name, would  
10 you recognize it?  
11 A. No.  
12 Q. Well, I'll tell you anyway,  
13 Danny Harpst. That doesn't ring a bell at  
14 all?  
15 A. No.  
16 Q. And so it was this gentleman,  
17 whose name you don't know, who drove you  
18 to Troy?  
19 A. Right.  
20 Q. And John Morris?  
21 A. John Morris was there and  
22 there was also a salesman from Sysco  
23 sitting at the table doing his business on

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1 the computer while they were telling me  
2 all this.  
3 Q. Do you know who that was?  
4 A. No, I don't know the salesman.  
5 Q. And where did this take place?  
6 A. At the Panama City office.  
7 Q. Which is called the yard?  
8 A. Yes.  
9 Q. It was a trailer there; is  
10 that right?  
11 A. Yes.  
12 Q. Okay. How did you know to  
13 come to that meeting?  
14 A. They called me up and said  
15 there was a meeting that I had to be at  
16 concerning the accident. I told them I  
17 had a doctor's appointment that day, and  
18 he said you be here before the doctor's  
19 appointment.  
20 Q. Who told you that, Morris?  
21 A. John Morris.  
22 Q. Called you on the phone?  
23 A. Yes.

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1 Q. All right. Was anyone else  
2 present besides you, Morris, the  
3 salesperson, and the guy that drove you to  
4 Troy?  
5 A. And my sister was there.  
6 Q. Okay. Why was she there?  
7 A. I'm sorry?  
8 Q. Why was your sister there?  
9 A. She drove me. I couldn't --  
10 my shoulder was bad.  
11 Q. Did she sit in on the meeting?  
12 A. She was there, yes.  
13 Q. So she heard everything you  
14 heard?  
15 A. Yes.  
16 Q. All right. Tell me everything  
17 that was said in this meeting and who said  
18 it.  
19 A. Okay. Did you say his name  
20 was Dan?  
21 Q. I believe his name is Danny  
22 Harpst.  
23 A. Well, he gave me a slip of

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1 paper and told me to read it and sign it.  
2 And I read it and I didn't like what it  
3 said, so I didn't sign it. I refused to  
4 sign it. And he said well, you are  
5 terminated.  
6 And while all this was going  
7 on, John Morris was taking all my stuff  
8 out of the -- we have like a shelving box,  
9 he was scraping all my stuff, paperwork  
10 and whatever into a garbage bag. And all  
11 the while -- he asked me to turn in my  
12 keys. And all the while, the salesman was  
13 sitting there at a different table doing  
14 whatever he was doing. And I handed the  
15 paper to my sister so she could look at  
16 it, and that was it. It happened that  
17 fast.  
18 Q. And you said something about  
19 Morris putting stuff in a bag?  
20 A. Garbage bag, yeah.  
21 Q. And he was getting that stuff  
22 out of what?  
23 A. I call it a pigeon coop. It's

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1 like a shelf against the wall and each  
2 section is for each driver and we store  
3 our paperwork and whatever we -- personal  
4 objects or whatever, books or whatever.  
5 Q. And you had some stuff in your  
6 pigeon hole?  
7 A. Yes.  
8 Q. What did you have in there?  
9 A. I don't remember anymore.  
10 Q. And he put that in a bag?  
11 A. Garbage bag.  
12 Q. Garbage bag, and gave it to  
13 you?  
14 A. Just scraped it right out of  
15 the pigeon hole into the garbage bag and  
16 handed me the bag.  
17 Q. Okay. Did you have some  
18 problem with him doing that?  
19 A. I just thought, for one thing,  
20 to do it in front of a different employee  
21 while he is working there, and then to  
22 have him just scrape my stuff out in a  
23 garbage bag like that -- he didn't even

1 A. That is about it.  
2 Q. Did your sister say anything?  
3 A. No. Not at the meeting, no.  
4 Q. Okay. Was there anything said  
5 about why you were being terminated other  
6 than what was on the paper they showed  
7 you?  
8 A. That they felt that it was  
9 reckless driving, whatever that was  
10 written on the paper. That is why they  
11 terminated me.  
12 Q. They didn't tell you anything  
13 that wasn't on the paper?  
14 A. What?  
15 Q. Did they tell you anything  
16 about why you were terminated other than  
17 what is on the paper?  
18 A. Right, that is it.  
19 Q. That is it?  
20 A. Uh-huh.  
21 Q. Okay. Anything else that  
22 happened in that meeting?  
23 A. I can't remember. I don't

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1 set it in the bag neatly and tie it up, he  
2 just scraped it in there, like grabbing  
3 all this and throwing it in a garbage bag  
4 and handed it to you.  
5 Q. But you don't remember what it  
6 was?  
7 A. No.  
8 Q. Did he damage any of it?  
9 A. I don't know.  
10 Q. Did he say anything to you  
11 about your stuff?  
12 A. About what?  
13 Q. About the stuff he was putting  
14 in the bag?  
15 A. No, I don't remember.  
16 Q. Anything else you recall being  
17 said in that meeting?  
18 A. No, I don't recall nothing  
19 else.  
20 Q. Did you say anything?  
21 A. I told them I wasn't going to  
22 sign the paper, I disagreed with it.  
23 Q. Okay. Anything else you said?

1 remember anything else other than that.  
2 Q. Anything else that was said  
3 that you remember?  
4 A. Not that I can recall.  
5 Q. Do you have any notes about  
6 that meeting?  
7 A. I don't know.  
8 Q. You didn't tape record it, did  
9 you?  
10 A. No.  
11 Q. What did you and your sister  
12 talk about after the meeting?  
13 A. She started trying to write  
14 down everything she could remember because  
15 they refused to give me the slip of paper  
16 that I wouldn't sign, so she tried to  
17 remember everything that happened and  
18 wrote it down.  
19 Q. What happened to the paper  
20 that she wrote that on?  
21 A. I don't know. I would have to  
22 ask her. I think she turned it into  
23 Higby.

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1 Q. Cliff Higby?  
2 A. Yes.  
3 Q. Who is he?  
4 A. He was the attorney that got  
5 me assigned to Mr. Middlemas.  
6 Q. When did you first go see  
7 Mr. Higby?  
8 A. I don't remember the dates.  
9 Q. How long was it after being  
10 terminated, or was it before?  
11 A. I was terminated two days  
12 before my operation, so it had to be after  
13 my operation sometime.  
14 Q. Okay.  
15 MR. UMBACH: Davis, do you  
16 know if that has been produced, the notes?  
17 MR. MIDDLEMAS: Has what?  
18 MR. UMBACH: Sister's notes.  
19 MR. MIDDLEMAS: I don't know.  
20 It surprised me when I heard him testify  
21 about it. Let me check. I may have it.  
22 MR. UMBACH: All right.  
23 Q. (BY MR. UMBACH:) All right.

1 A. Baraboo Sysco Foods.  
2 Q. Baraboo Sysco Foods?  
3 A. Yes.  
4 Q. And you worked up there for  
5 about twenty years?  
6 A. I think it's pretty close to  
7 twenty years, yeah.  
8 Q. And then you came to Florida  
9 in 1995?  
10 A. Right.  
11 Q. And you transferred from  
12 Baraboo Sysco Foods to Cochran Sysco?  
13 A. Right. I believe that is what  
14 it is called.  
15 Q. And that company was based in  
16 Jackson, Mississippi?  
17 A. I believe so.  
18 Q. Did you go through some kind  
19 of hiring process with Cochran?  
20 A. No, just called them up and  
21 asked for a transfer, if they had a job  
22 opening. And one day they called me back  
23 and said we have a job opening for you.

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1 Anything else you and your sister talked  
2 about concerning what took place in the  
3 meeting?  
4 A. Just that it was wrong the way  
5 it was done, it was wrong that they  
6 terminated me, and then two days before my  
7 operation while I was still on workmen's  
8 comp. That is what -- we have to see a  
9 lawyer.  
10 Q. Y'all talked about on the ride  
11 home?  
12 A. Yeah.  
13 MR. UMBACH: Let me ask a  
14 couple of more questions and then we will  
15 take a lunch break, how about that?  
16 MR. MIDDLEMAS: That is fine.  
17 Q. Let me see if I can clear up  
18 your work history with Sysco. I  
19 understand that you first worked for Sysco  
20 in Appleton, Wisconsin?  
21 A. Yes.  
22 Q. Did Sysco up in Wisconsin have  
23 a name?

1 Q. Did you fill out an  
2 application with Cochran?  
3 A. No.  
4 Q. No?  
5 A. I don't remember filling out  
6 no application form when I asked for the  
7 transfer.  
8 Q. Okay. And you worked for  
9 Cochran Sysco from '95 until the Calera  
10 company began; is that right?  
11 A. Yeah.  
12 Q. And this Calera company is  
13 called Sysco Foods of Central Alabama; is  
14 that right?  
15 A. That is right.  
16 Q. And that is who you worked for  
17 at the time of your termination?  
18 A. Yes.  
19 Q. Does it sound accurate to you  
20 that Sysco Central Alabama started in  
21 Calera in 1999?  
22 A. Sounds like it, right.  
23 Q. And did you have to go through



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1 any kind of hiring process with Sysco  
2 Central Alabama?  
3 A. I don't remember doing it.  
4 All we were is just transferred from one  
5 division to another.  
6 Q. You don't recall whether you  
7 filled out an application or had an  
8 interview or anything like that?  
9 A. I don't remember doing that.  
10 Q. Okay. If you were a woman, I  
11 wouldn't ask you this question. How much  
12 do you weigh?  
13 A. How much do I weigh?  
14 Q. Yeah.  
15 A. Right now, about 3 and a half.  
16 Q. 3 and a half, 350 pounds?  
17 A. Yeah.  
18 Q. Okay. How does that weight  
19 compare to your weight when you were  
20 working at Sysco?  
21 A. I was about 300 when I was  
22 working.  
23 Q. So you are heavier now than

1 they are drivers or supervisors, or do you  
2 know?  
3 A. I do not know.  
4 Q. Have you ever been on the  
5 Committee?  
6 A. I have never been on a  
7 Committee.  
8 Q. Do you know anybody who has  
9 ever been on the Accident Committee?  
10 A. Not that I am aware of.  
11 Q. Okay. That accident you had  
12 where you were found not guilty, do you  
13 know if the Accident Review Committee  
14 reviewed that accident?  
15 A. I do not know.  
16 Q. A fellow named John Cruz, who  
17 was your coworker?  
18 A. Yes.  
19 Q. Was he a friend of yours?  
20 A. Yes.  
21 Q. Was he your closest friend at  
22 Sysco?  
23 A. At Sysco, yes.

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1 you were then?  
2 A. Yes.  
3 Q. Okay. You mentioned earlier  
4 this morning that you were involved in an  
5 accident where a car hit the dolly of your  
6 doubles?  
7 A. Yes.  
8 Q. And I think you said that you  
9 were found not guilty?  
10 A. Yes.  
11 Q. Who found you not guilty?  
12 A. The Judge. I took it to  
13 court. They wrote me a ticket for  
14 improper right-hand turn. I took it to  
15 court and I was found not guilty.  
16 Q. Okay. Are you familiar with  
17 the Sysco Accident Review Committee?  
18 A. Yes.  
19 Q. Who is on the Committee, as  
20 you understand it?  
21 A. I don't know who is on the  
22 Committee.  
23 Q. Okay. Do you know whether

1 Q. Did you have any other  
2 coworkers that you would consider your  
3 friends?  
4 A. Just acquaintances more than  
5 friends.  
6 Q. Okay. Did you and Cruz visit  
7 each other at each other's houses?  
8 A. Yes.  
9 Q. How often did that take place?  
10 A. Every weekend that we had off,  
11 we would probably visit if we had  
12 something to do. We would invite each  
13 other to do something.  
14 Q. Was he married?  
15 A. I don't think he was. I think  
16 he was divorced.  
17 Q. How far apart did you live?  
18 A. Ten, fifteen miles.  
19 Q. Did y'all have hobbies you did  
20 together?  
21 A. No, we probably just go out  
22 once in a while.  
23 Q. You were asked about how many

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1 times you have driven the route back and  
2 forth from Panama City to Calera. And as  
3 I understand it, that is the route you  
4 drove the whole time you were working for  
5 the Calera operation?  
6 A. Yes.  
7 Q. And so if I am right about the  
8 date, that would have been since 1999,  
9 right?  
10 A. Yeah.  
11 Q. And would you say you drove  
12 that route on an average of four times a  
13 week?  
14 A. Yes.  
15 Q. And that route from Panama  
16 City to Calera and back always took you  
17 through the intersection of 231 and 271?  
18 A. Yes.  
19 Q. In other words, that  
20 intersection, that was the route, that was  
21 the way to get from Panama City to Calera  
22 and back?  
23 A. Without going through

1 MR. MIDDLEMAS: That would be  
2 fine.  
3 (Lunch break taken.)  
4 Q. (BY MR. UMBACH:) Okay.  
5 Mr. Fischer, we are back from lunch. I  
6 think we can get you finished up here  
7 before long.  
8 Did you have to have a physical  
9 each year required by the Department of  
10 Transportation to drive a truck?  
11 A. Every two years, I think, it  
12 was.  
13 Q. Every two years. So you  
14 had -- you call it a DOT physical?  
15 A. Yes.  
16 Q. Okay. And so you had those  
17 every couple of years, give or take, while  
18 you were at Sysco?  
19 A. Yes.  
20 Q. Which doctor did you go to for  
21 that?  
22 A. I used to go to either Sea  
23 Wind and got a physical or TriCare.

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1 Montgomery, yes.  
2 Q. That is the route you always  
3 took?  
4 A. Yes.  
5 Q. Did that intersection change  
6 over that roughly five, five and a half  
7 year period?  
8 A. Not drastically, no.  
9 Q. The truck you drove at Sysco,  
10 do you know how much it weighed?  
11 A. No.  
12 Q. Any idea?  
13 A. No.  
14 Q. Do you know what the  
15 dimensions were, how long it was, how tall  
16 it was?  
17 A. No. I think the trailers were  
18 13 feet high.  
19 Q. High, okay. Do you know how  
20 long they were?  
21 A. I don't remember offhand.  
22 MR. UMBACH: Okay. All right.  
23 Why don't we take a lunch break?

1 Q. Those are the names of  
2 clinics?  
3 A. Uh-huh.  
4 Q. What is name of the first one?  
5 A. Sea Wind.  
6 Q. And Prime Care?  
7 A. Right.  
8 Q. Were those personal doctors  
9 you were going to for those physicals?  
10 A. Yes.  
11 Q. And was there some point in  
12 time where you were told you shouldn't go  
13 to your personal doctor, but you ought to  
14 go to the company doctor?  
15 A. No.  
16 Q. You always went to a personal  
17 doctor for a DOT physical?  
18 A. Yes.  
19 Q. Did you always pass the DOT  
20 physical?  
21 A. Yes.  
22 Q. Do you remember the names of  
23 the doctors that did your physical?

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<p>1 A. Not offhand, no.</p> <p>2 Q. Do you know of any other</p> <p>3 drivers that went to their personal</p> <p>4 doctors for a DOT physical as opposed to a</p> <p>5 company doctor?</p> <p>6 A. No.</p> <p>7 Q. So as far as you know, the</p> <p>8 other drivers went to the company doctor</p> <p>9 for that?</p> <p>10 A. I don't know where they went.</p> <p>11 Q. You mentioned a problem with</p> <p>12 taking vacation?</p> <p>13 A. Yes.</p> <p>14 Q. Do I understand that at some</p> <p>15 point in time, the driver with the most</p> <p>16 seniority got to select their vacations</p> <p>17 first?</p> <p>18 A. Yes.</p> <p>19 Q. Is that the way they did it</p> <p>20 when you were at Cochran Sysco?</p> <p>21 A. Yes.</p> <p>22 Q. And is that the way it was</p> <p>23 done when you first came to Sysco Central</p>	<p>1 Q. And you would get to pick a</p> <p>2 week?</p> <p>3 A. Yes.</p> <p>4 Q. And then it was passed down to</p> <p>5 the next senior person?</p> <p>6 A. Yes.</p> <p>7 Q. And then it would come back to</p> <p>8 you?</p> <p>9 A. No. It would go all the way</p> <p>10 down the line before it would come back to</p> <p>11 me.</p> <p>12 Q. Then it would come back to you</p> <p>13 to pick a second week?</p> <p>14 A. Yes.</p> <p>15 Q. So you got to pick first, but</p> <p>16 you just didn't get to schedule all your</p> <p>17 vacation?</p> <p>18 A. Yes.</p> <p>19 Q. That is correct?</p> <p>20 A. Correct.</p> <p>21 Q. Okay. And who was your</p> <p>22 supervisor when that changed?</p> <p>23 A. John Morris.</p>
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<p>1 Alabama?</p> <p>2 A. Yes.</p> <p>3 Q. And did it change at some</p> <p>4 point?</p> <p>5 A. Yes.</p> <p>6 Q. Do you remember when it</p> <p>7 changed?</p> <p>8 A. No, I don't, but it changed.</p> <p>9 Q. How did it change?</p> <p>10 A. He would only allow me</p> <p>11 one week and then I had to turn the book</p> <p>12 over to whoever was next in line. And</p> <p>13 they would get one week and they had to</p> <p>14 turn the book over to the next in line.</p> <p>15 So I couldn't take my full four weeks and</p> <p>16 schedule it.</p> <p>17 Q. So you had four weeks of</p> <p>18 vacation?</p> <p>19 A. I believe it was four weeks.</p> <p>20 Q. And you were the senior guy?</p> <p>21 A. Yes.</p> <p>22 Q. And so you got to pick first?</p> <p>23 A. Right.</p>	<p>1 Q. Okay. Did you talk to him</p> <p>2 about why he changed that?</p> <p>3 A. Yes.</p> <p>4 Q. What did he say?</p> <p>5 A. He thought it was more equal,</p> <p>6 the equality was better the way it is now</p> <p>7 where I could only schedule one week and</p> <p>8 it gives the younger drivers a chance to</p> <p>9 get their scheduled vacations in.</p> <p>10 Q. Was there some point in time</p> <p>11 when you were taking care of your mother?</p> <p>12 Was your mother ill?</p> <p>13 A. Yes.</p> <p>14 Q. Is she still living?</p> <p>15 A. No.</p> <p>16 Q. When did she pass away?</p> <p>17 A. December 2004.</p> <p>18 Q. And for what period of time</p> <p>19 were you caring for her?</p> <p>20 A. All the time. All the while I</p> <p>21 was down here.</p> <p>22 Q. All the while that you were in</p> <p>23 Florida?</p>

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1 A. Yes.  
2 Q. How did you take care of her?  
3 A. On my days off, I would take  
4 her to her doctors' appointments and  
5 wherever she wanted to go.  
6 Q. Was she living with you?  
7 A. Yes.  
8 Q. Okay. Was she living with you  
9 the entire time you were living in  
10 Florida?  
11 A. Yes.  
12 Q. Did the amount of care she  
13 needed from you increase over time?  
14 A. No, about the same.  
15 Q. About the same, okay. Up  
16 until she passed away?  
17 A. Yeah.  
18 Q. Okay.  
19 (Whereupon, Defendant's  
20 Exhibit 12 was marked for  
21 identification.)  
22 Q. Is Defendant's Exhibit 12 an  
23 application that you completed? Is this

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1 Q. On July 27th?  
2 A. It's the one I would have  
3 signed.  
4 Q. Does this refresh your memory  
5 that it was Danny Harpst who met with you?  
6 A. Okay.  
7 Q. Do you see the name there,  
8 Danny Harpst?  
9 A. Yeah, I see it.  
10 Q. So this was given to you  
11 during the meeting in the trailer where  
12 your sister was present?  
13 A. Yes.  
14 Q. All right. Do you see down at  
15 the bottom where it says your contact for  
16 worker's compensation, for your worker's  
17 compensation claim is Nicole Bobe,  
18 B-O-B-E, Gallagher Bassett; do you see  
19 that?  
20 A. Yes.  
21 Q. Did you ever call her?  
22 A. Yes.  
23 Q. You did?

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1 an application that you completed?  
2 A. It looks like it.  
3 (Reviewing document.)  
4 Q. And that is an application  
5 with Cochran Sysco?  
6 A. That is what it says.  
7 Q. All right. Does this refresh  
8 your memory that you did fill out an  
9 application with Cochran Sysco?  
10 A. The way I took that was just  
11 to get information for my address and  
12 whatever personal information they needed.  
13 I was already working for them when they  
14 gave me that.  
15 Q. Okay.  
16 (Whereupon, Defendant's  
17 Exhibit 13 was marked for  
18 identification.)  
19 Q. Take a look at Defendant's  
20 Exhibit 13. Is that the termination  
21 document that you were shown when you  
22 met --  
23 A. Yes.

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1 A. I'm sorry, I was just saying  
2 yes. Did I ever call her for?  
3 Q. Did you ever call her?  
4 A. I don't know if I did or  
5 didn't.  
6 Q. Okay. Do you know where she  
7 was located?  
8 A. No, I don't know.  
9 Q. You were aware of the Accident  
10 Review Committee, you told me about that  
11 earlier?  
12 A. Say that again, please.  
13 Q. You have heard of the Accident  
14 Review Committee?  
15 A. Yes.  
16 Q. And was there a point when you  
17 understood that your accident was being  
18 reviewed by the Accident Review Committee?  
19 A. I understood it was being  
20 investigated. I didn't know it was being  
21 reviewed.  
22 Q. Did you ever tell John Morris  
23 you were concerned about what the Accident

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1 Review Committee was going to do?  
2 A. I don't remember.  
3 (Whereupon, Defendant's  
4 Exhibit 14 was marked for  
5 identification.)  
6 Q. Take a look at Number 14. Is  
7 Defendant's Exhibit 14 a document you  
8 signed showing that you had received a  
9 copy of the Accident Review Policy?  
10 A. Sometime in 2000, yeah.  
11 Q. So this document, Number 14,  
12 does have your signature on it?  
13 A. Yes.  
14 (Whereupon, Defendant's  
15 Exhibit 15 was marked for  
16 identification.)  
17 Q. Is Defendant's Exhibit 15 a  
18 copy of the Accident Review Policy?  
19 A. (Reviewing document.)  
20 Q. Is that the policy you  
21 received?  
22 A. I don't know if it is. It  
23 looks like it is.

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1 Q. Okay. Were you ever told what  
2 the Accident Review Committee decided  
3 about your accident?  
4 A. By the letter that they showed  
5 me.  
6 Q. The letter of termination?  
7 A. Yes.  
8 (Whereupon, Defendant's  
9 Exhibit 16 was marked for  
10 identification.)  
11 Q. Did you understand that the  
12 Committee determined your accident to be a  
13 major accident?  
14 A. That is what it said, I  
15 believe.  
16 Q. Have you ever seen Defendant's  
17 Exhibit 16?  
18 A. (Reviewing document.)  
19 Q. Have you ever seen Number 16?  
20 A. Yes.  
21 Q. You have?  
22 A. No. This here, I haven't seen  
23 this. I don't remember seeing this one at

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1 all.  
2 Q. Okay. Are you aware of any  
3 Sysco driver who had a major accident, as  
4 determined by the Review Committee, who  
5 did not get terminated?  
6 A. I'm not aware of anyone that  
7 had any major accident.  
8 Q. Okay. So can I take from that  
9 that you are not aware of any driver who  
10 had a major accident, as determined by the  
11 Committee, who did not get fired?  
12 MR. MIDDLEMAS: I'm going to  
13 object to the question, asked and  
14 answered. But go ahead.  
15 A. I don't know.  
16 Q. Okay. Now, you understood  
17 that you had a right to appeal your  
18 termination, right?  
19 A. Yes.  
20 Q. And you did that, correct?  
21 A. Yes.  
22 Q. And do you remember the appeal  
23 hearing?

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1 A. Just that we had it over the  
2 telephone.  
3 Q. And you had a lawyer with you?  
4 A. Yes.  
5 Q. That was Cliff Higby?  
6 A. Yes.  
7 Q. And I think there were  
8 actually two phone conversations over your  
9 appeal, right?  
10 A. I think there was. It sounds  
11 right.  
12 Q. And you remember there was a  
13 court reporter?  
14 A. Yes.  
15 Q. On your end of the phone?  
16 A. Uh-huh.  
17 Q. Taking down everything that  
18 was said?  
19 A. I think so.  
20 Q. Okay. And do you remember  
21 that your lawyer asked you questions in  
22 the course of that second phone  
23 conversation?



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1 A. Yes.  
2 Q. Did you answer his questions  
3 truthfully?  
4 A. I believe so.  
5 Q. And then at some point after  
6 that second conversation, did you receive  
7 a decision about your appeal?  
8 A. I think we did, yes.  
9 Q. Defendant's Exhibit?  
10 (Whereupon, Defendant's  
11 Exhibit 17 was marked for  
12 identification.)  
13 Q. I'll show you Number 17. And  
14 that is addressed to your lawyer, but  
15 usually that means you have seen it. Have  
16 you seen this letter?  
17 A. I don't remember it.  
18 Q. This Clifford C. Higby, he was  
19 your lawyer in September of 2004; is that  
20 right?  
21 A. Uh-huh.  
22 Q. Is that right?  
23 A. Yes.

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1 (Whereupon, Defendant's  
2 Exhibit 18 was marked for  
3 identification.)  
4 Q. Did you receive a copy of  
5 Defendant's Exhibit 18?  
6 A. I don't remember it.  
7 Q. Again, this one is addressed  
8 in care of your lawyer, Mr. Higby, right?  
9 A. Okay.  
10 Q. I'm asking. Isn't it?  
11 A. Yes.  
12 Q. Okay. And you see in that  
13 letter it says some documentation is  
14 enclosed, documentation from each member?  
15 A. Yes.  
16 Q. Doesn't it say that? Do you  
17 recall receiving that documentation?  
18 A. I don't remember any of these.  
19 Q. Okay.  
20 (Whereupon, Defendant's  
21 Exhibit 19 was marked for  
22 identification.)  
23 Q. I have marked as one exhibit

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1 Defendant's Exhibit 19, three memos  
2 regarding your appeal. Let me show those  
3 to you.  
4 A. (Reviewing documents.)  
5 Q. My question to you is: Is  
6 that the documentation that came with the  
7 previous letter I showed you marked as  
8 Defendant's Exhibit 18?  
9 A. I don't remember.  
10 Q. Okay. Let me show you a  
11 document that is called a First Report of  
12 Injury. It's Defendant's Exhibit 20.  
13 (Whereupon, Defendant's  
14 Exhibit 20 was marked for  
15 identification.)  
16 Q. Have you ever seen this one  
17 before?  
18 A. I don't remember it.  
19 Q. Are you aware of any other  
20 First Report of Injury that relates to  
21 your accident other than this one?  
22 A. No, I'm not aware of it.  
23 Q. Who have you asked, if anyone,

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1 to be a witness in your lawsuit?  
2 A. I haven't asked anybody.  
3 Q. Who have you talked to about  
4 the claims that you are making against  
5 Sysco in your lawsuit?  
6 A. My family.  
7 Q. I'm sorry?  
8 A. My family.  
9 Q. And by your family, who are  
10 you talking about?  
11 A. My sister.  
12 Q. All right.  
13 A. And my fiancée.  
14 Q. All right. Anybody else that  
15 you have talked about about your claims in  
16 the case?  
17 A. Offhand, I can't remember  
18 anybody else.  
19 Q. All right. Tell me about your  
20 conversations with your sister concerning  
21 your claims against Sysco.  
22 A. We discussed the -- what we  
23 believe is going on.

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<p>1 Q. What do you believe is going 2 on?</p> <p>3 A. I believe that this was an 4 opportunity for them to get rid of me 5 because of my age.</p> <p>6 Q. Anything else y'all have 7 talked about?</p> <p>8 A. Just generally what happened. 9 She has seen me wake up with these 10 nightmares where I would be jumping out of 11 the bed or the couch or whatever, and she 12 saw what I went through with the operation 13 on the shoulder. She saw how bad it was.</p> <p>14 Q. Okay. Have you talked with 15 your fiancée about the claims you are 16 making in this lawsuit?</p> <p>17 A. Yes.</p> <p>18 Q. Tell me about those 19 discussions.</p> <p>20 A. She -- basically, the same 21 stuff, that she is aware of how -- what I 22 think is going on. And she also seen me 23 have these nightmares. She also seen me</p>	<p>1 had to watch our hours so we would not 2 drive over hours.</p> <p>3 Q. Okay. In other words, that is 4 something you had to watch?</p> <p>5 A. Yes.</p> <p>6 Q. Because the drivers were very 7 busy?</p> <p>8 A. Yes.</p> <p>9 Q. Would June and July be in the 10 peak of the season?</p> <p>11 A. I wouldn't know that.</p> <p>12 Q. You wouldn't know that?</p> <p>13 A. I don't know, just that it 14 seemed that the business was doing very 15 good all year long, but during the spring 16 break it was getting pretty heavy.</p> <p>17 Q. Okay. In between spring break 18 and Labor Day was probably the busiest 19 part of the year, right?</p> <p>20 A. Yeah, probably, I would think 21 so.</p> <p>22 Q. Are you claiming in this 23 lawsuit that being terminated has caused</p>
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<p>1 in the operation.</p> <p>2 Q. All right. Would you describe 3 Sysco's business as seasonal?</p> <p>4 A. As seasonal?</p> <p>5 Q. Uh-huh.</p> <p>6 A. Yes, to some degree, yes.</p> <p>7 Q. All right. And it's 8 particularly seasonal down in the 9 panhandle of Florida, isn't it?</p> <p>10 A. Yes.</p> <p>11 Q. So business is greater in the 12 spring and summer months, isn't it?</p> <p>13 A. Yes.</p> <p>14 Q. Because that is when the 15 restaurants are busiest, right?</p> <p>16 A. Yes.</p> <p>17 Q. And did your workload increase 18 in the spring and summer generally?</p> <p>19 A. Yes.</p> <p>20 Q. How so?</p> <p>21 A. Working more days. Instead of 22 four days, we would have to be working 23 five days. It got to be a point where we</p>	<p>1 you emotional distress?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Can you describe for me 4 the distress that your termination has 5 caused you?</p> <p>6 A. I lost everything I had. I 7 had to sign my house over to my sister so 8 that she has taken over the payments. I 9 lost my car. My motorcycle, I had to 10 sell. These nightmares just will not go 11 away. It was hard, very hard for me to 12 get in the car again. Even now, it was 13 hard for me to come down here.</p> <p>14 Q. Any other way that you have 15 suffered emotional distress or mental 16 anguish as a result of being terminated?</p> <p>17 A. I'm sorry, would you say that 18 again, please?</p> <p>19 Q. Yes. You have given me 20 examples of the effects of being 21 terminated have had on you, and I'm really 22 trying to focus on emotional effects. Are 23 there any other emotional effects of being</p>

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1 terminated that you haven't told me about?  
2 A. Nothing I can think of right  
3 now.  
4 Q. Okay. Have you had nightmares  
5 about being terminated?  
6 A. No.  
7 Q. You said it was hard for you  
8 to get into the car again. Is that as a  
9 result of being terminated?  
10 A. No, that is a result of the  
11 accident.  
12 Q. You said you had to sell your  
13 motorcycle. Is that as a result of being  
14 terminated?  
15 A. Yes, I believe so.  
16 Q. How is that?  
17 A. I had to pay some bills.  
18 Q. Needed the money to pay some  
19 bills?  
20 A. Yes.  
21 Q. Do I understand you to say  
22 that you had to sell your car?  
23 A. Yeah.

1 upkeep.  
2 Q. Have you seen any psychiatrist  
3 or psychologist about being terminated?  
4 A. No.  
5 Q. Or any kind of counselor about  
6 being terminated?  
7 A. No.  
8 Q. Pastor?  
9 A. No, not really.  
10 Q. Have you seen any doctor,  
11 physician about being terminated?  
12 A. Not about being terminated,  
13 no.  
14 Q. As I understand it, you have  
15 not looked for a job since your  
16 termination from Sysco?  
17 A. Correct.  
18 Q. Why not?  
19 A. I couldn't work.  
20 Q. Why not?  
21 A. Because of my shoulder.  
22 Q. Understanding that you have  
23 not looked for a job, has anybody offered

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1 Q. Was that to pay bills?  
2 A. Yes.  
3 Q. Do you have access to a car  
4 now?  
5 A. Yes, I do.  
6 Q. Whose is that?  
7 A. Tonya's mother. We use her  
8 car. And I have an old, I think, it's a  
9 1990 Mazda Miata.  
10 Q. Okay. That you own?  
11 A. Yes.  
12 Q. What car did you sell?  
13 A. My Cadillac.  
14 Q. And why did you assign your  
15 house to your sister?  
16 A. Why what?  
17 Q. Why did you assign your house  
18 to your sister?  
19 A. I can't afford the payments.  
20 Q. So you sold it to her?  
21 A. It's over \$1,000 a month. I  
22 ain't got that. And that is not counting  
23 the electric and gas or whatever, the

1 you a job?  
2 A. No.  
3 Q. I'm looking at a document that  
4 your lawyer sent me that says that you  
5 have endured severe pain and suffering and  
6 mental anguish as a result of the  
7 termination of your job, okay?  
8 Have you now told me about all  
9 of the severe pain, suffering and mental  
10 anguish that you have suffered as a result  
11 of being terminated?  
12 A. Severe pain for the shoulder I  
13 had to go through. That operation was  
14 really, really bad.  
15 Q. What I am trying to do is  
16 separate what you have suffered as a  
17 result of your shoulder from suffering you  
18 have experienced from being terminated.  
19 Do you see? And so I'm trying to focus on  
20 the effect that being terminated has had  
21 on you.  
22 So is there pain and suffering  
23 and mental anguish as a result of your

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1 termination that you have not told me  
2 about?

3 A. I can't think of anything  
4 right now.

5 Q. You understand this is my  
6 opportunity to find out. It's my only  
7 opportunity, so I want you to think hard  
8 about that. But if you have told me all  
9 you can think of, I'll leave you alone.

10 A. I don't know what else I can  
11 say right now. I just don't.

12 Q. Okay. Do you recall, did you  
13 use cruise control when you were driving  
14 your tractor trailer at Sysco?

15 A. At times, depending on what  
16 highway you were on.

17 Q. Do you recall whether you were  
18 using that just before the accident?

19 A. No, I wasn't.

20 Q. So you are saying you know for  
21 sure you were not?

22 A. Right. There is certain  
23 highways I wouldn't use it because of

1 questions that we sent to your lawyer.

2 And my first question is: Is  
3 your signature on, I believe, it's the  
4 fourth page?

5 A. Yes.

6 Q. Okay. And when you signed  
7 these, did you understand that you were  
8 signing them -- or that your signature  
9 indicated that these answers were  
10 truthful?

11 A. Yes.

12 Q. Now, I'm looking at your  
13 answer to number ten, which is on the  
14 second page. About two-thirds of the way  
15 down in that answer, it says it is also my  
16 understanding that due to my termination,  
17 I have lost the ability to collect on  
18 certain benefits, such as retirement, that  
19 I had accumulated during my  
20 twenty-six years at Sysco. Do you see  
21 that?

22 A. Yes.

23 Q. Okay. What is your

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1 where they were.

2 Q. Okay.

3 A. Like if there is stop lights,  
4 I would not use them. If we get into  
5 highway where there was long stretches, I  
6 would use it.

7 Q. So if there are a lot of stop  
8 lights, you would not use it; if there was  
9 a long stretch of highway, you might?

10 A. Yes.

11 Q. And what was it about the  
12 location of this accident that makes you  
13 sure that you are not using the cruise  
14 control?

15 A. Because of the stop lights  
16 going through the city part.

17 Q. Let me show this to you.  
18 (Whereupon, Defendant's  
19 Exhibit 21 was marked for  
20 identification.)

21 Q. I have marked this as  
22 Defendant's Exhibit 21, and I understand  
23 these to be your answers to some written

1 understanding about having lost the  
2 ability to collect retirement benefits?

3 A. At the time, I was getting  
4 stock. I can't remember how -- they say  
5 stock where you get it at a cheaper price  
6 than what you can buy it for normally.

7 Q. Uh-huh.

8 A. And I lost it all. Stock  
9 options -- and I had stock options coming  
10 to me. And I vested up to a certain  
11 amount, I can't remember offhand. But  
12 when I see terminated, I lost it, whatever  
13 was stock options I already had.

14 Q. That were not vested?

15 A. That is right.

16 Q. But the vested ones you kept,  
17 right?

18 A. I sold them before they fired  
19 me.

20 Q. Okay. Why did you sell them?

21 A. I needed the money.

22 Q. Did you sell them because you  
23 thought you were about to be fired?

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1 A. Yes.  
2 Q. What made you think you were  
3 about to be fired?  
4 A. The way I was being treated.  
5 Q. Tell me about that.  
6 A. Just the way they reacted  
7 towards me.  
8 Q. Who and what?  
9 A. John Morris.  
10 Q. As I understand it, you sold  
11 these vested stock options, you sold your  
12 stock because you thought you were about  
13 to be terminated?  
14 A. Uh-huh.  
15 Q. And how soon before actually  
16 being terminated did you sell this stock?  
17 A. I think it was the same week.  
18 Q. Same week?  
19 A. Yes.  
20 Q. Okay. Because I take it you  
21 were not surprised when you were told you  
22 were being terminated?  
23 MR. MIDDLEMAS: Object to the

1 Q. Any kind of expression on his  
2 face?  
3 A. Probably.  
4 Q. Okay. Did the fact that you  
5 had had a major accident cause you to  
6 think you might be terminated?  
7 A. Because of the accident, I  
8 might, yes.  
9 Q. Anyone else make you think you  
10 might be terminated other than John  
11 Morris?  
12 A. No. I can't say who, just the  
13 way I was being treated.  
14 Q. As I understand it, there were  
15 no other cars involved in this accident,  
16 right?  
17 A. Right.  
18 Q. Let me ask you this: The lane  
19 that you went through, the intersection, I  
20 think, that was Highway 231?  
21 A. Yes.  
22 Q. Is that a four-lane highway  
23 there?

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1 form of the question.  
2 A. No.  
3 Q. No, meaning you were not  
4 surprised?  
5 A. I was not surprised.  
6 Q. And you said the way John  
7 Morris was treating you, you thought you  
8 were going to be terminated?  
9 A. The way they were talking  
10 towards me, yeah.  
11 Q. Who is "they" and what did  
12 they say?  
13 A. Just the attitude.  
14 Q. Who is "they"?  
15 A. Like I said, John Morris and  
16 people wouldn't talk to you that worked  
17 there. And I just figured this is it,  
18 they are getting ready to get rid of me.  
19 Q. Anything John said that made  
20 you think --  
21 A. Just his attitude.  
22 Q. Expression on his face?  
23 A. Huh?

1 A. Yes.  
2 Q. And apparently at the time you  
3 went through, there were no cars coming  
4 through in either direction; isn't that  
5 right?  
6 A. That is correct.  
7 Q. What do you think might have  
8 happened if there been some cars coming  
9 through there?  
10 A. I would be --  
11 MR. MIDDLEMAS: Object to the  
12 form.  
13 MR. UMBACH: Did you get that  
14 answer?  
15 THE REPORTER: No.  
16 Q. What was your answer?  
17 A. I would probably be dead.  
18 Q. You would probably be dead.  
19 Do you think someone else, if there was  
20 someone else in another car, they might be  
21 dead, too?  
22 A. Yes.  
23 Q. Do you know who was on the



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1 Accident Review Committee that reviewed  
2 your accident?

3 A. No.

4 Q. Did you ever talk to John  
5 Morris about working in the warehouse?

6 A. I remember saying something  
7 about working in the safety department. I  
8 don't know about warehouse.

9 (Whereupon, Defendant's  
10 Exhibit 22 was marked for  
11 identification.)

12 Q. Mr. Fischer, I'm going to show  
13 you a collection of documents. Some of  
14 these may already be an exhibit. But my  
15 question to you -- I think I'm going to  
16 take a break after I ask you this  
17 question.

18 But my only question is: Did  
19 you sign each of these documents that is  
20 Defendant's Exhibit 22? Did you sign  
21 them?

22 MR. UMBACH: And while he's  
23 doing that, let me go talk to Ms. Wheat

1 Q. Have you seen that before?

2 A. It doesn't -- it doesn't ring  
3 a bell.

4 Q. If you look in here on page 3,  
5 it says we are very pleased to announce,  
6 effective April 1, 2000, Sysco's  
7 retirement plan is being enhanced. Do you  
8 see that?

9 A. (Reviewing document.)

10 Q. Do you see that?

11 A. I see it, yeah.

12 Q. You don't recall getting  
13 information about the enhancement of  
14 retirement?

15 A. I don't recall it.

16 Q. And do you recall whether Ms.  
17 Dunagan was talking to you about the  
18 enhanced retirement plan?

19 A. No, I'm not aware of it.

20 Q. All right. Does April 2000  
21 sound like the time that you had your  
22 discussion with Ms. Dunagan?

23 A. I don't know.

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1 and we may be about done.

2 MR. MIDDLEMAS: Okay.  
3 (Short break taken.)

4 Q. (BY MR. UMBACH:) All right.  
5 Mr. Fischer, I gave you what, Defendant's  
6 Exhibit 22?

7 A. Yes.

8 Q. Did you sign every page of  
9 that exhibit?

10 A. Yes.

11 Q. Okay. Are you aware of any  
12 other drivers that had injuries at work?

13 A. That had injuries at work?

14 Q. Yeah.

15 A. I'm not aware of any.

16 Q. Okay. Let me show you a  
17 pamphlet that I have just received and  
18 I'll --

19 MR. UMBACH: Let me get his  
20 answer to my question before I decide  
21 whether to make this an exhibit.

22 Q. Have --

23 MR. MIDDLEMAS: Okay.

1 MR. UMBACH: I will not make  
2 this an exhibit. All right. I think T.J.  
3 has got a couple of questions and I'll let  
4 him go.

5 MR. SEGREST: Just a couple of  
6 more.

8 REEXAMINATION BY MR. SEGREST:

9 Q. Mr. Fischer, have you been  
10 seen by a vocational expert of any kind?

11 A. A what?

12 Q. Vocational expert?

13 MR. MIDDLEMAS: Not that I  
14 know of, other than it was a part of the  
15 Social Security disability claim. I don't  
16 know, I didn't handle the Social Security  
17 disability claim.

18 A. What is a vocational expert?

19 Q. An expert that would examine  
20 you and give you any kind of opinion as to  
21 your employability or vocational loss.

22 A. I remember taking a test over  
23 at the therapy office.

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1 MR. MIDDLEMAS: The FCE.  
2 Q. Who was your attorney on the  
3 Social Security claim, did you have one?  
4 A. Yes.  
5 Q. Who was your attorney in that?  
6 A. Syfrett.  
7 Q. How do you spell that?  
8 A. S-Y --  
9 MR. MIDDLEMAS: F-R-E-T-T, I  
10 believe.  
11 Q. S-Y?  
12 MR. MIDDLEMAS: F-R-E-T-T, I  
13 believe.  
14 Q. And where is Mr. or Ms.  
15 Syfrett located?  
16 A. I'm sorry?  
17 Q. Is that a he or she?  
18 A. She.  
19 Q. In Panama City?  
20 A. Yes.  
21 Q. What is her first name?  
22 A. I don't remember her first  
23 name.

1 Q. Were you wearing your glasses  
2 at the time of the accident?  
3 A. No. These are newer ones.  
4 Q. Were you wearing a pair of  
5 glasses at the time of your accident?  
6 A. I was wearing prescription  
7 glasses at the time of the accident.  
8 Q. Were they damaged in the  
9 accident at all?  
10 A. No, I don't think so.  
11 Q. Were they still on your face  
12 at the time you came to a stop?  
13 A. Yes.  
14 Q. And they weren't damaged at  
15 all?  
16 A. I'm sorry?  
17 Q. They were not damaged at all?  
18 A. No.  
19 Q. When did you get those glasses  
20 you are wearing now?  
21 A. I think at the end of 2005.  
22 Q. Let me show you what will be  
23 Defendant's Exhibit 23. And I just want

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1 Q. You are wearing glasses today.  
2 Are those prescription lenses?  
3 A. Yes.  
4 Q. How long have you worn  
5 glasses?  
6 A. Since grade school.  
7 Q. Have you ever worn contact  
8 lenses?  
9 A. No.  
10 Q. What is your prescription in  
11 those glasses?  
12 A. I don't know.  
13 Q. The doctor that gave you those  
14 glasses or your eye doctor, is it your  
15 understanding that you are supposed to  
16 wear those glasses to drive?  
17 A. Yes.  
18 Q. You have to have them to  
19 drive?  
20 A. Yes.  
21 Q. Are you nearsighted or  
22 farsighted?  
23 A. Nearsighted.

1 you to look at this and tell me, just like  
2 you did for 22, if this is your signature  
3 on that document.  
4 (Whereupon, Defendant's  
5 Exhibit 23 was marked for  
6 identification.)  
7 A. Yes, it's my signature.  
8 Q. The only thing else I've got  
9 is you said that you assigned your house  
10 to your sister?  
11 A. Yeah. I had to sign a paper  
12 stating that if this house is ever sold,  
13 she gets the profits of it because she is  
14 making all the payments.  
15 Q. Is that the house you are  
16 living in now?  
17 A. No.  
18 Q. You are living in a different  
19 house now that is owned by your fiancée?  
20 A. Yes.  
21 Q. Is your sister still living in  
22 the house that you signed the payments  
23 over to her on?

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1 A. Yes.  
2 MR. SEGREST: That is all I've  
3 got.

4  
5 REEXAMINATION BY MR. UMBACH:

6 Q. One more thing, Mr. Fischer.  
7 Did any supervisor or manager at Sysco  
8 ever say anything that indicated to you  
9 that the company had a problem with  
10 employees that got hurt at work?

11 A. Not that I remember.

12 MR. UMBACH: That is all I've  
13 got.

14 MR. MIDDLEMAS: Thank you.

15

16

17 FURTHER THE DEPONENT SAITH NOT

18

19

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21

22

23

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1 C E R T I F I C A T E

2

3

4 STATE OF ALABAMA)

5 JEFFERSON COUNTY)

6

7 I hereby certify that the  
8 above and foregoing deposition was taken  
9 down by me in stenotypy, and the questions  
10 and answers thereto were reduced to  
11 typewriting under my supervision, and that  
12 the foregoing represents a true and  
13 correct transcript of the deposition given  
14 by said witness upon said hearing.

15 I further certify that I am  
16 neither of counsel nor of kin to the  
17 parties to the action, nor am I in anywise  
18 interested in the result of said cause.

19

20

21

22

23 COMMISSIONER - NOTARY PUBLIC

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**FRANK FISCHER**  
**SYSCO FOOD SERVICES OF CENTRAL ALABAMA, INC., ET AL.**

**FRANK FISCHER**  
 November 21, 2006

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# **EXHIBIT A**



## ACKNOWLEDGMENT AND RECEIPT OF HANDBOOK

I understand that the employee handbook describes important information about SYSCO Central Alabama and that I should consult my manager regarding any questions not answered in the handbook.

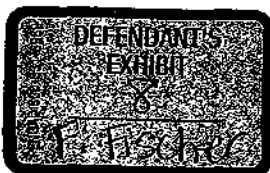
Since provisions of the handbook are subject to change, I further understand that revisions to the handbook may supersede or eliminate one or more existing policies.

My employment relationship with SYSCO Central Alabama is voluntarily entered into and is subject to termination by me or my employer at will, with or without cause, at any time either party believes such action to be appropriate.

I acknowledge that this handbook is neither a contract of employment nor a legal document. I have received, read, understood and will comply with both the policies contained in this handbook and any revisions made to it. I understand that this handbook belongs to the Company and I will return it when I am no longer employed by the Company.

Frank Fischer      4-22-99  
Employee's Signature      Date

FRANK FISCHER  
Employee's Name (Print)



## ACKNOWLEDGMENT AND RECEIPT OF HANDBOOK

I understand that the employee handbook describes important information about SYSCO Central Alabama and that I should consult my manager regarding any questions not answered in the handbook.

Since provisions of the handbook are subject to change, I further understand that revisions to the handbook may supersede or eliminate one or more existing policies.

My employment relationship with SYSCO Central Alabama is voluntarily entered into and is subject to termination by me or my employer at will, with or without cause, at any time either party believes such action to be appropriate.

I acknowledge that this handbook is neither a contract of employment nor a legal document. I have received, read, understood and will comply with both the policies contained in this handbook and any revisions made to it. I understand that this handbook belongs to the Company and I will return it when I am no longer employed by the Company.

Frank Fischer      1-8-1  
Employee's Signature      Date

FRANK FISCHER  
Employee's Name (Print)

### ACKNOWLEDGMENT AND RECEIPT OF HANDBOOK

I understand that the employee handbook describes important information about SYSCO Central Alabama and that I should consult my manager regarding any questions not answered in the handbook.

Since provisions of the handbook are subject to change, I further understand that revisions to the handbook may supersede or eliminate one or more existing policies.

My employment relationship with SYSCO Central Alabama is voluntarily entered into and is subject to termination by me or my employer at will, with or without cause, at any time either party believes such action to be appropriate.

I acknowledge that this handbook is neither a contract of employment nor a legal document. I have received, read, understood and will comply with both the policies contained in this handbook and any revisions made to it. I understand that this handbook belongs to the Company and I will return it when I am no longer employed by the Company.

Fischer      6-11-3  
Employee's Signature      Date

FRANK FISCHER  
Employee's Name (Print)

### ACKNOWLEDGMENT AND RECEIPT OF HANDBOOK

I understand that the employee handbook describes important information about SYSCO Central Alabama and that I should consult my manager regarding any questions not answered in the handbook.

Since provisions of the handbook are subject to change, I further understand that revisions to the handbook may supersede or eliminate one or more existing policies.

My employment relationship with SYSCO Central Alabama is voluntarily entered into and is subject to termination by me or my employer at will, with or without cause, at any time either party believes such action to be appropriate.

I acknowledge that this handbook is neither a contract of employment nor a legal document. I have received, read, understood and will comply with both the policies contained in this handbook and any revisions made to it. I understand that this handbook belongs to the Company and I will return it when I am no longer employed by the Company.

Fischer      6-11-3  
Employee's Signature      Date

FRANK FISCHER  
Employee's Name (Print)

# **EXHIBIT B**



Safety Manual 2004

**Acknowledgement and Receipt of Manual**

I understand that the Safety Manual describes important information about SYSCO Food Services of Central Alabama and that I should consult my manager regarding any questions not answered in the manual.

Since provisions of the manual are subject to change, I further understand that revisions to the manual may supersede or eliminate one or more existing policies.

I hereby certify that I have received a copy of SYSCO Food Services of Central Alabama Safety Manual and that I have read, understood and will comply with both the policies contained in this manual and any revisions made to it. I understand that this handbook belongs to the Company and I will return it when the Company no longer employs me.

Frank Fischer      2-7-4  
Employee's Signature      Date

FRANK FISCHER  
Employee's Name (Print)

